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THE MILITARY OBLIGATION IN MEDIAEVAL ENGLAND

With Especial Reference to

COMMISSIONS OF ARRAY

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PREFACE

THE history of the military obligation in England and the influence of military history upon constitutional development are subjects very commonly referred to but seldom clearly defined. Varying interpretations with regard to the former in successive periods and specific illustrations of the latter are the objects of this study. In the history of the military obligation in any country may be revealed the martial spirit of a people, or the lack of it; and in the outcome of an early clash between civil and military tendencies, the nature of the subsequent history may be determined. It is significant that at a very early date, England, never having subscribed to the military demands of the feudal institution, imposed even more limitations upon military service, first, by action of councils of feudal nobility and, later, by the Parliament.

This twofold nature of the English military system, at once feudal and national in character, may be revealed in a study of the document known as "The Commission of Array." About it may be grouped most of the incidents in the military and constitutional relationship referred to above. Writers have made but passing (and often contradictory) references to this important commission in its earlier uses, though at the time of the Civil Wars of the seventeenth century it attracted attention because it was one of the chief subjects in dispute between Charles and his Parliament.

The Commission of Array was a formal writ, or order, from the sovereign to his supporters commanding them to muster and array the men of their district for military service. Its origin was no doubt feudal. But study has revealed that the Commission meant much more than this simple explanation implies. Its history is closely connected with much of the story of the development of the English state, and its true significance has been overlooked. We are appreciating more and more that historical incidents and institutions, hitherto neglected, are of greater consequence than has been supposed; and that many

so-called important events are the mere effects of lines of causation, hitherto overlooked or improperly evaluated. The influence of the Commission of Array seems to be an instance of that sort of under-estimation.

In considering its importance, however, a fair sense of proportion is essential, even though continued study of a single subject tends to destroy it. To state that the Commission of Array was the most important factor in determining the outcome of the Civil Wars in England is to create the impression that the desired sense of proportion has been shattered. But to say, as is said in this study, that the writ was one of the foremost influences in deciding the issue between Charles and his Parliament, an influence never rightly understood and certainly never properly estimated, is to advance, we think, a fairly conservative, proportionate opinion.

A chronological treatment has been followed. In Chapter I, which is introductory, an attempt is made to explain the nature and origin of the writ, the Commission of Array. Chapters II to V, inclusive, trace the military history and its influence upon constitutional development down to 1642. Chapters VI to IX, inclusive, treat of the operations of the Commission during the period of the Civil Wars in England and of various problems arising in connection therewith. Chapter X is a summary.

Not for the purpose of forestalling criticism, but of inviting it, the author states that he is aware of, and accepts full responsibility for, certain portions which, to the casual reader, may seem incomplete. The study is based upon what the sources yielded—"no sources, no history"—and no attempt is made to gild over any deficiencies, in spite of the fact that the Anglo-Saxon period does not always supply us with materials by means of which a satisfactory, continuous story may be told. The fifteenth century is one of domestic strife and foreign wars in which constitutional progress is reduced to a minimum; this, together with the fact that search failed to produce more materials, is the explanation for a comparatively brief treatment of that period. Enough is told to preserve the thread of the narrative and thus produce continuity. Again the Tudor period of English history is but briefly considered, since at that time the Commission of Lord Lieutenancy largely superseded

the Commission of Array, and that subject has been so adequately covered by Gladys Scott Thomson¹ that elaboration here would be unnecessary repetition.

This piece of work was undertaken at the suggestion of Professor Arthur L. Cross, to whom therefore the author is greatly indebted. Other members of the faculties of the University of Michigan and the Ohio State University have made helpful suggestions. For research carried on in the Widener and Law libraries at Cambridge, Massachusetts, every facility was made available. The attendants at the Public Record Office and the British Museum in London and at the Bodleian Library, Oxford, also rendered helpful assistance. A memorable dinner at Sidney Sussex College, Cambridge, in February, 1926—the occasion of a fruitful discussion of the theme with Mr. E. J. Passant and his colleagues in history—should not go unmentioned. Appreciation to all is herewith acknowledged.

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¹ *The Lords Lieutenants in the Sixteenth Century*. London, 1922.

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CHAPTER I

INTRODUCTION

COMMISSIONS of Array have received little attention at the hands of students of the late mediaeval period of English history. Lack of appreciation of their true import, uncertainties of origin and use, and difficulties of investigation have all tended toward this neglect.¹ Nevertheless, in their use and misuse are reflected many interesting phases of the constitutional and legal, as well as the military, development of the period. Playing an important part in the process of rallying the fighting forces of the country at a time when "the business of war" was pre-eminent, they survived to form the chief bone of contention between Charles and his Parliament in the seventeenth century.

The prototype of the Commission is without doubt the royal command for the mustering of the old feudal array. Its origin must have been continental and Norman, for we find nothing that approximates it in the more or less haphazard method of recruiting forces used by the Anglo-Saxons.² But if it did come into England with such other features of the feudal institution as were adopted and applied there, it was not accepted *in toto* but was given an English modification which came to make it distinctive of that civilization. This modification may have been so marked as to make the question of the similarity between the old feudal military summons and the later Commission of Array fully as controversial as the larger argument over the existence of a real "feudal system" in England at all.

As a phase of the military history of the period, it may require justification. None better can be given than the following statement of a well-known writer:

¹ No complete or even partial treatment of the subject of Commissions of Array exists as far as can be found. Slight references to the topic occur in divers places as indicated on p. 4, note 8.

² Until the time of Alfred, no regularity was observed in calling the Anglo-Saxon forces. Even after his more orderly military system was in vogue, no record of formal summons can be found. But in the feudal countries at a period just prior to the Conquest, royal commands to the feudal array were common.

The study of war is not the study of a relic of barbarism. . . . Below a certain stage of civilization, there can be no military history. . . . After all, the system of forcing people to observe a certain line of conduct, under penalties, is that upon which all human society is founded. . . . War is not essentially force. . . . And here (in the many sacrifices necessary to war) we strike the peculiarity which makes war the true touchstone of nations. It is the supreme test of their merits and demerits. . . . Of the general soundness of the body politic, of the capacity of its leaders, of the devotion of their followers, of the moral force which inspires all ages and both sexes to endure hardship and sorrow with cheerfulness and to meet adversity with confidence unshaken and with courage undaunted, for all of this, the trial of trials is war.³

It is of the influence and effects of war and military history that we write, not of war itself. The study of the Commissions of Array typifies the importance of these influences and effects from a legal and constitutional point of view. No aspect of the history of England is the history of a militaristic community. England has rightly been termed the most civilian state in Europe; and yet, even in her case, the course of military events has shaped and influenced her national growth, and, as with every other civilized state, ancient or modern, her military institutions reflect her history. It is true that in England the military at nearly all times was subservient to the civil establishment, and the latter, while influenced, was rarely dominated by the former, as so frequently occurred elsewhere.

The relations, also, between sovereign and subjects are more accurately gauged in times of war than in the quieter times of peace; nothing better illustrates a transition in these relationships than the fact that at one time a king must command military service, at another he is able to rally the state to voluntary enlistments. The Commissions of Array reflect this change in the English nation.

In England also, as elsewhere in varying degrees, the growth of a national state may be traced in the transition from a system of feudal defense to the organization of a strictly national army. It is of more than passing significance that we find Henry VII including in one of his Commissions of Array an appeal to the loyalty and devotion of the people of England to their country. Unusual words are these in a feudal military

³ Fortescue, J. W., *Lectures on Military History*, p. 14.

summons and indicative of a changed state. Edward I presaged a new era in history, when, after the rebellious David, now fighting his brother Llewellyn, *contra morem gentis*, as the chronicler tells us,⁴ broke the peace and swooped down upon Hawarden, he, Edward, confronted with this new problem, wrote to six earls and crown tenants requesting them to accompany the king, *ad vadia nostra*.⁵ Here was a new expression in a royal summons to vassals holding by military service. The twofold nature of the document sent out by the first of the house of Tudor spoke volumes—the form, that of the old feudal commission, relic of a day that was passing, the content, prophetic of the dawn of a new era. The Commission might command military service, but the appeal to loyalty would bring more ready and efficient compliance. Again, Edward I hinted at a future practice, the very nature of which was bound to result in nationalistic participation in military ventures and recognition ultimately of the rights of the body controlling the purse-strings in a land where, luckily for the commonalty, royal revenues did not suffice to keep up with royal ambitions in foreign lands. Parliamentary progress must have been sadly delayed had not the English kings had designs across the channel.

This study was also suggested by the possibility of reflecting the development of English national consciousness in the origin and growth of means of national defense. The transition from feudalism to nationalism is nowhere better shown than in the military, where the assumption of control by the government meant the gradual breakdown of the old liveried and private warfare. The history of the use of the Commission of Array illustrates this change.

With the period of the conflict between Charles and his Parliament, we reach the point of highest importance in the study of the subject. The quarrel for control of the military, so important on the eve of hostilities, centered about the rivalry of the royal commissions and the parliamentary ordinances. The results of the contests in the various shires were quite indicative and prophetic of the ultimate outcome of the larger

⁴ Trivet, *Chronicles*, p. 309.

⁵ Morris, J. E., *The Welsh Wars of Edward I*, p. 155. According to Morris, this is the first instance of this practice.

conflict.⁶ The legal questions that arose over the Commissions of Array finally brought about the permanent settlement of the relative rights of sovereign and Parliament in military matters.⁷

Oddly enough, while the full importance of the Commissions of Array has been overlooked, the fact remains that they are mentioned by constitutional and legal writers as well as by military authors, and this seems to indicate that the tendency to consider them purely as an incidental phase of military history is incorrect, or, at best, quite incomplete. Investigation also shows that the periods in which the Commissions of Array were used, as well as their true import, have never been fully agreed upon by leading writers on military and constitutional subjects. Also uncertainty as to their proper classification prevails.⁸

Various problems confront the searcher in early English mediaeval records of an official character. Not the least is properly to determine in advance the correct classification of the document sought. Only by this process may the most profitable search be made. But the Commission of our study is not easy to classify.

The Commission of Array was a division of those writs and letters issued for the most part under the Great Seal. They are usually classed as a special form of Letters Patent.⁹ But there were also writs and letters issued under the smaller seals, that is, the Privy Seal, the Signet, or the sign manual. In the last

⁶ See Chaps. VI and VII.

⁷ See Chap. VIII.

⁸ In Fortescue, *History of the British Army*, I, 16 and 97, a slight reference is made to Commissions of Array.

Prothero, G., *Select Statutes and Documents*, refers to them "as having been misunderstood." (Intro., pp. cxix, cxxi.)

Constitutional writers refer to them, but differ as to classification and periods of use: Hallam, *Constitutional History*, I, 534 ff.

Cf. Medley, *Constitutional History*, who notes only one, that in 1272 (p. 473).

Gneist treats them only as a phase of county government, *History of the English Constitution*, Vol. II, Chap. XXXI, pp. 130, 132, note.

Hall, *Studies in English Official Historical Documents*, p. 331, emphasizes them mostly "from the Edwardian period."

Gross, *Sources and Literature of English History*, 2d. Ed., No. 2149, p. 479, lists them only under the heading "Army and Navy."

Maitland, *Constitutional History*, pp. 277-80.

Stubbs, *Constitutional History*, treats them chiefly as a phase of the evil of purveyance.

⁹ Hall, *op. cit.*, pp. 327 ff.

group of Privy Seals, Signet Letters, and warrants we sometimes find the Commission of Array.¹⁰ However, the usual form of issuance was as a special form of the Letters Patent issued under the Great Seal. Possibly, however, from the Edwardian period only, they appear as a special form under the Privy Seal, in the class with Signet Letters and warrants.¹¹ This lack of uniformity greatly complicates the search. Mabillon in his elaborate work *De Re Diplomatica*¹² arranges royal charters as follows:

- | | |
|-----------------------------|---------------|
| 1. Praecepta, diploma regum | 3. Placita |
| 2. Indiculi epistolae | 4. Tractoriae |
| 5. Descriptiones | |

Mabillon, according to Hardy, classifies Letters Patent as *Praecepta*, though Hardy suggests that they come closer to Mabillon's *Indiculi*. As Hardy states,¹³ the distinguishing clause of the Letters Patent is *Has Litteras nostras fieri fecimus Patentes*, and he lists military summons among the subjects to which they referred.¹⁴

Irregularity in the recording of official documents next besets the path of the investigator. The custom of recording documents on rolls of parchment, though of ancient origin, began, as far as England is concerned, after the Conquest and even then only in an unsystematic fashion. The Land-boc of the Anglo-Saxons held records of land transfers and legal grants, though often the vacant pages of Mass Books served the same purpose *in membranis liturgicis contractus suos scribendi mos apud Anglo-Saxones fuit*.¹⁵ Judicial and executive records were sadly lacking. Sometimes a decision of the Witenagemote was made out *sedente curai*, with the names of the principal persons present subscribed thereto and a memorandum afterwards entered, *in perpetuam rei memoriam*, on the blank leaf of some missal; *mos erat apud Anglo-Saxones in libros qui in Coenobiorum bibliothecis asservati erant, tanquam in tabulas*

¹⁰ *Ibid.*, Classification, pp. 331 ff. See also p. 329, note 4. Cf. Palgrave, *Parliamentary Writs*, II.

¹¹ Hall, *op. cit.*, p. 331, note 12.

¹² Lib. I. c. 11, p. 3, as quoted by Hardy, *Introduction to the Patent Rolls*. Preface.

¹³ Hardy, *op. cit.*, p. 4.

¹⁴ *Ibid.*, pp. 23-24.

¹⁵ *Rotuli Litterarum Clausarum*, Vol. I, Introd., vi.

*publicas, acta curiarum communium referre et emptiones, venditiones, donationes, etc.*¹⁶

There are no rolls of a date earlier than Henry I, at least none extant.¹⁷ The question of the use of the "roll," as we understand it today, by William I has not been settled.¹⁸

Palgrave¹⁹ lists writs as follows:

1. Writs of summons to prelates, earls, and great individuals
2. Proxies
3. Precepts and mandates
4. Writs for election of members of the House of Commons
5. Writs for levying expenses upon knights, citizens, and burgesses
6. Writs for Military Summons addressed to individuals. (Usually enrolled upon the *Rotuli Clausarum*)
7. Writs for the performance of military service in relation thereto addressed to the sheriff of the county. Upon "return" of these the sheriff listed the names of those summoned or "destrained."
8. Commissions of Array

In this listing it is possible to see that there is no distinction made between summons for service due by reason of tenure and that which was performed under the general term allegiance. The writer states in justification that no such distinction is possible, and while this is true only in part, it illustrates the confused and uncertain condition of the rules governing military service.

The searcher finds these writs in a variety of places. Palgrave has gathered together a considerable number. Further than that, they are found in the Close Rolls, the Patent Rolls, the Fine Rolls, the Scotch Rolls, the Scutage Rolls. Miscellaneous references to phases of military service are found in the records of the Chancery (under the Miscellanea of the Chancery), formerly preserved in the Tower of London.

¹⁶ Hicks, in *Linguarum Veterum Septentrionalium Thesaurus, Epist. Dissert.*, tome I, p. 29 (3 Vols.), fol. 1705, testifies to the absence of enrollment during the Anglo-Saxon period—*etiam mos erat leges Regum latos in codicibus monasteriorum, tanquam in tabulas publicas referendi*. (Quoted in *Rotuli Litterarum Clausarum*, loc. cit.) This same reference brings out the disagreement over the use of the roll by William I. See note 18 below.

¹⁷ *Rotuli Litterarum Clausarum*, p. viii.

¹⁸ *Ibid.* The view here given is that the Conqueror did not use the roll as it later came to be understood, at the time of the survey. A chronicler, Ingulphus, uses the word "rotulus" to describe that which was made use of in this connection. But, as the *Rotuli Litterarum Clausarum* points out, in answer to this, the word "rotulus" does not mean exclusively a "roll," for it is synonymous at times with the word "liber."

¹⁹ *Op. cit.*, Vol. I, Preface; cf. also Vol. II, Preface.

Army Accounts (5 Henry III to 21 Henry VIII) contain lists of returns to Commissions of Array and the Marshalsea Rolls contain proffers of service (5 Edw. I to 10 Edw. II). These last were kept by the Constable or the Earl Marshal of the Army.

The *Rotuli Clausarum* yielded the greatest returns in the way of material. In these are enrolled subjects of a varied nature. On their backs are often inscribed the summons to and the prorogations of, parliaments, councils, and convocations as well as returns to summons for military service.²⁰

The Patent Rolls, containing the *Litterae Patentes* distinguished by the Great Seal at the bottom, likewise contain Commissions of Array, of Muster, of Lord Lieutenancies, and so on.

The Fine Rolls have reference to military service in the shape of records of sums of money paid for many things, including exemption from military service.

With these problems of classification and search in mind, it is possible to see that the results may leave much to be desired. No attempt has been made to fill in those places where gaps occur, or to give any especial continuity to the treatment as a whole.

To the writer the attendant problems of investigation have been as appealing as the main subject itself, and are recited herein because of this. To solve these problems even partially, to trace out the direct and indirect results of the workings of a misunderstood practice, to throw light on the development of nationalism in the transitions of military customs, these have been the motivating influences in shaping this piece of work.

²⁰ See Hardy, *Introduction to the Printed Volumes of the Close Rolls*. In Tout, T. F., *Chapters in Administrative History of Mediaeval England*, discussions of interest on "Seals," (I, 22-31 and Chap. IV) and "*The Wardrobe in War Time*," (II, 131-45) are given.

CHAPTER II

THE ANGLO-NORMAN PERIOD, 1066-1272

WE search in vain for the first formal enactment of the military obligation resting upon the Saxon races.¹ Perhaps, as one writer has aptly phrased it, "the obligation was so well known, so well understood, and so inherent in the very nature of citizenship in a free state that the craft of lawyers was not needed to define it, the force of law not needed to exact it."²

The principle of universal service seems to have governed as well in Anglo-Saxon England as it had in the earlier days of Germanic tribal organization.³ Under this obligation it was the duty of every freeman to answer a summons to arms, fully equipped at his own expense, according to his station, and to support himself during the campaign.⁴ From the first it was impossible to secure this complete, theoretical service, and the practice arose of assigning military duty upon the basis of land-holdings, the number of hides (about a hundred and twenty acres each) being the determining factor.

In addition to this "host," which seems to have been from the first much less than "the nation in arms," the period of the Heptarchy saw the use of supplementary military units, the personal followers of the king or chieftain—the Gesith-men. From these developed the Anglo-Saxon thegns. With the rise of great landed proprietors, armed retinues of followers became common, while the obligation of the mass of the freemen was fulfilled through the performance of guard duties and repairing castles and roads.

Early Anglo-Saxon codes refer to the military obligation. The laws of King Aethelbert in Kent made the army consist

¹ Berry, Robert Potter, *History of the Volunteer Infantry*, p. 14.

² *Ibid.*

³ Among the Germanic tribes, military service was a privilege (of free-men), not an obligation; out of the privilege to serve, came the obligation to serve.

⁴ Gneist, R., *History of the English Constitution*, I, 5.

of the whole free population.⁵ The laws of Ine refer to the Gesith-men and reflect the same situation in the larger kingdom of Wessex.⁶

With the growing complexity of society, with its tendency toward feudal conditions apparent, a larger proportion of the ceorls are becoming either the vassals of lords or tribute-paying tenants on the royal demesne lands.⁷

The clauses of immunity, *ab omni publica vectigali, a victu, ab expeditione, ab opere regio*, used in grants of land in the seventh and eighth centuries seem to show that the 'fyrd' has become a burden on land.⁸ By the time of the reign of Alfred, the obligation of the *trinoda necessitas* was very clearly defined and almost uniformly accepted.⁹

The invasions of the Danes strengthened the need for adequate provisions for defense and the old levy of the fyrd was not strong enough to meet the new conditions. Alfred sought to increase the hierarchy of fighting men by enlarging the thegnhood, incorporating into it all men of wealth and energy among the ceorls.¹⁰ In the light of subsequent controversies over military matters, it is important to interpret the rights of the king in connection therewith in the pre-conquest period.

Among the Germanic tribes the right of the kings (if any) or chieftains was not unlimited,¹¹ and such restrictions as were imposed extended to the very important matters of peace, war, and military service. The same practices continued after the establishment of the kingdoms in England. While the obligation to serve might be universal, the more important questions pertaining to peace and war, the details of the service rendered, and the like were not in the hands of the king alone. The latter's powers grew rapidly as the need for that unity and sovereignty, essential to kingdoms, became more and more ap-

⁵ Laws 13, 15, 16, 24, 25. Price and Thorpe, eds. (Rec. Com. Ed.)

⁶ Laws 19, 32, 33, 39, 54, 59, 67. Price and Thorpe, *op. cit.*

⁷ Military service appears as a burden on land. For a discussion of this, see Maitland, *Domesday Book and Beyond*, pp. 235, 236.

⁸ *Ibid.*, p. 236.

⁹ So much so that Maitland (*op. cit.*, p. 273) thinks that any one should be suspicious of a land-book purporting to show immunity from this threefold service.

¹⁰ Alfred's Laws, I, 37 (Rec. Com. Ed.)

¹¹ Thus, says Tacitus, *nec regibus infinita aut libera potestas*. (*De Mor. Germ.*, 7, 10, 11, 25, *passim*.)

parent. The king was the highest official, he is the "Hlaford" and the "Mundbora" of the whole nation.¹² The latter term conveys the thought of *defensor et patronus*.

But military sovereignty, according to Gneist,¹³ involves a number of component parts, in at least two of which that sovereignty was limited by the subjects. These are:

a) Decisions touching peace and war, which from ancient times were to be decided by the freemen or subjects,

b) Distribution of military service and equipment, which came to be left in the hands of the governing bodies of the shires, and

c) The personal command of the army, assumed by the king in person.

Naturally these limitations upon the military sovereignty did not extend to the personal followers of the king, his own armed retinue, whom he might summon and dispatch at will.

Thus, even before the Conquest, the twofold character of England's fighting forces is evident: the national levy, based upon the fyrd, with the king's authority thereover definitely restricted, and the smaller hierarchy of professional fighters, the armed retinue of the sovereign.

The Viking invasions increased the military burdens, tended to disturb the old social stratifications, and made observance of the old constitutional forms less possible. The middle class disappears,¹⁴ the richer ceorls merge into the thegnhood, often under compulsion, and the poorer sink into subjection. In an age more military the ability to render military service, rather than ownership of land, the test in peace times, became the test upon which class distinctions were based. We find it stated that "if a ceorl thrive so that he have a healm and a coat of mail and a sword . . . but have not five hides of land . . . he is nevertheless a thegn."¹⁵ Again, "the merchant who hath fared twice over the sea at his own expense," is also eligible.¹⁶ The chief duty of the thegn was to follow the king in full mail whenever the latter went to war.

¹² *Chron. Sax.*, anno 921.

¹³ *Op. cit.*, I, 19.

¹⁴ Alfred's *Lawes*, I, 37 (Rec. Com. Ed.).

¹⁵ Wergild document, 9, 10, 11, in Thorpe, *Early English Lawes*, p. 79.

¹⁶ Canute's *Lawes* (Heriot Law). *Leges*, quoted by Oman, *Art of War in the Middle Ages*, p. 110.

In the troubled years of the close of the Anglo-Saxon period the military constitution of the national army and that of the royal followers tended to fuse. The national council lost its rights in decisions of peace and war and the local assemblies theirs, in respect to distribution and details of service. The country was in a sorry state. "No matter with which we have to deal is darker than the constitution of the English army on the eve of its defeat," states Maitland.¹⁷

So comes to an end the Anglo-Saxon period with its contributions summarized as follows: the twofold character of the English military system; the fyrd and personal followers of the king, the latter greatly increased through the thegnhood in the concluding years; the "constitutional forms with regard to limitations upon royal authority especially in matters pertaining to the national militia; the fyrd indefinitely established. In respect to the Commission of Array, no written records show any regularity of method employed in summoning the host and therefore nothing which even approximates a prototype for the Commission. We are led to surmise that no very formal proceedings took place and little regularity in practice prevailed. However, as indicated, the military conditions and practices of the preconquest period are essential to an understanding of our subject in the years after 1066.

The reign of William constitutes an epoch in military history as in other things. The introduction of Norman feudalism, the emphasis upon military service, the whole process of centralization, reacted upon the subsequent relations between military history and constitutional development with which we are to be concerned.

Conditions were favorable under which to superimpose the feudal institution upon the Anglo-Saxon manorial system. Even the presence of something approaching a military tenure of land existed as a setting for the Conqueror's feudal program.¹⁸ The relationship between donor and donee existed; now "this relationship was established by a formal ceremony; the thegn swore an oath of fealty, and it is likely that he bent his knee and bowed his head before his lord. The Normans saw their

¹⁷ *Domesday Book and Beyond*, p. 156.

¹⁸ See Maitland, *op. cit.*, pp. 236 and 294.

homage in the English commendation.”¹⁹ Feudal tenures more clearly defined came in, and all evidence points to a very close supervision of the conditions of these tenures by William.²⁰ Military strength was the cover stone of his reign, and feudal resources in the shape of knights’ fees held *in capite* upon condition of military service were introduced by the Conqueror.²¹ Military tenures with all the abuses to which they are liable become a part of the system from now on. The royal prerogative of deciding questions of peace and war superseded the Anglo-Saxon view that such questions were to be decided by the Witenagemote, especially if the national militia was to be called. Every vassal of the crown and every under-vassal had become the king’s *homo*. Fealty was pledged directly to the king as instanced in the enfeoffment from Bury St. Edmunds, and the military oath held good, *intra et extra regnum*.²² The tendency was thus to feudalize the national militia and place it entirely in the hands of the sovereign. *Castellatio sine licentia* is also an offense, and this further tends to bring the defenses of the country under royal supervision.

In the counties the older Anglo-Saxon practice of allowing the assemblies to apportion the contingents, a transaction between the sheriffs and those bodies, was discontinued. The central administration took over this work on the bases of *Domesday Book* and the *Cartae* of 1166;²³ the vicecomites,

¹⁹ *Ibid.*, p. 294. See also p. 69 for the ceremony of commendation and its significance.

²⁰ Mr. David C. Douglas, in the *English Historical Review* for April, 1927 (pp. 245-47), presents a very interesting charter of enfeoffment under the Conqueror. It relates to Abbot Baldwin of Bury St. Edmunds and his holdings around the years 1065-98, and survives, according to Mr. Douglas, in the Black Book of the Abbey (Cambridge Univ. Library, MS., Mm. 12, 19). The prelude to one of the sections of the survey shows that this was but one of many new enfeoffments of this nature. There is a reservation of fealty to the king and the claims of the Abbot on his “man” are made subject to those of the king, *Petrus se pro abbate seruiturum promittit infra regnum si, priusquam ex parte regis, ex abbatis parte monetur*.

²¹ Round, J. H., *Feudal England*, pp. 225-35. This reference contains the gist of the argument over the introduction of knight-service into England. The older views of Stubbs and Freeman are now discarded. See also p. 305, on the Eversham writ.

²² Charta, Will. I, 3, c. 2., *Select Charters*, pp. 83-84.

²³ The formal returns (*cartae*) made to the exchequer in 1166 by the barons are preserved in the *Liber Niger* and the *Liber Ruber* and are considered by Mr. Round to be the “starting point for an inquiry into the origin and growth of military tenure in England.” *Feudal England*, pp. 236-46.

the forerunners of the Commissioners of Array, appeared with the king's formal military summons.²⁴ Mobilization was thus accomplished under the efficient martial rule of William and his successors; the Norman feudal army was at once imposing and highly efficient. It formed the basis of the political and social system of the Anglo-Norman period.

After the time of the Conqueror, the Norman army remained organized in like manner, except that many abuses, such as those in connection with military tenures, crept in, and the system became especially burdensome and occasioned much complaint.

William Rufus at the beginning of his reign *debitum servitium quod pater suus imposuerat ab ecclesiis violenter exigit*, according to the Ely chronicle.²⁵ Threatened with a revolt against the obnoxious system, William II summoned the feudal host and exacted the full *servitium debitum* in order to crush effectually any uprising.²⁶

Henry I used the host in like manner, as did also his successors. Thus the Norman army, in spite of attempts to "feudalize the fyrd" and make the host the nation in arms, remained essentially a twofold organization, the national militia based upon the fyrd and the feudal element. Under this latter every tenant *in capite* must render knight's service in proportion to the amount of his holdings.²⁷

The summons to service was a feudal military order addressed to the barons ordering them to appear with their required proportions of men and horses. The sheriff was also used to act as a check upon the fulfillment of the obligation. His instructions advised him to warn the barons, the tenants-in-chief within his bailiwick, of their duty and to insist upon compliance therewith. The landholder thus came to know his

²⁴ See Appendix, p. 195, for the prototype of the Commission of Array.

²⁵ *Historia Eliensis* (1848 ed.), p. 276; quoted by Round, J. H., *op. cit.*, p. 299.

²⁶ *Ibid.*, p. 276; quoted by Round, *op. cit.*, p. 305.

²⁷ *Omnes comites et barones, et milites et servientes, et universi liberi homines totius regni nostri praedicti, habeant & teneant se semper bene in armis et in equis, ut decet et oportet; et sint semper prompti et bene parati ad servitium suum integrum nobis explendum et peragendum cum opus fuerit; secundum quod nobis debent de foedis et tenementis suis de jure facere; et sicut illis statuimus per commune concilium totius regni nostri praedicti.* Grose, *Military Antiquities*, I, 5, note. Quoted from Cap. 58, Wilk. 228.

servitium debitum according to the *vetus feoffmentum*, and by it he had to provide the required number of knights in one of two ways: either by distributing the bulk of his estates in lots of about five hides each and requiring these subtenants to discharge the knights' service for him, or by keeping about him a household of domestic knights like the house-carls of old, maintaining them without giving them land. The feudal host was the backbone of the Anglo-Norman military system supplemented by some employment of *stipendiarii milites* and by the occasional calling of the fyrd. This latter body was summoned by William Rufus chiefly for purposes of extortion. It had served efficiently in the North Country, as at the Battle of the Standard, and in 1173. The famous Assize of Arms sought to establish this army on a legal basis.²⁸ Thus are the *liberi homines* created into a national army to be used for service in connection with the feudal host.

Stipendiary forces were made possible by the institution of the practice of commutation of service and the payment of scutage, dating probably from the reign of Henry II.²⁹ Another cause which led to the employment of mercenaries was that great objections had been raised to military service outside of England since it was doubtful whether a given fief was bound *ad servitium militare extra metas Angliæ*.³⁰ A precedent existed earlier for the substitution of money payments in the shape of fines mutually agreed upon in each individual case under the heading, *ne transfretent, pro remanendo ab exercitu, ne abeat cum rege*.³¹ The assessing of *scutagia* was a cause of complaint and later came to be the basis of one of the articles

²⁸ 27 Hen. II, Rymer, *op. cit.*, I, 37 (Rec. Com. Ed.). By it, each owner of a knight's fee, not by virtue of being a holder, but rather through universal duty, was to possess war equipment in proportion to his holding, and be prepared for military service.

²⁹ The practice arose from the right secured to send others for military service and then to make pecuniary satisfaction to the crown in lieu of this service. Soon this grew into the formal levying of scutage, which dates from 5 Henry II, according to Grose, *Military Antiquities*, I, 7, note. See also Baldwin, J. F., *Scutage in England*, and Pollock and Maitland, *History of the English Law*, pp. 266, 267. The history of scutage is surrounded with obscurity, but it seems now to be agreed that some sort of similar practice arose quite a while before 1159.

³⁰ See essay, "The Oxford Debate on Foreign Service" in Round, *op. cit.*, pp. 528-38. On the origins of scutage, also see Madox, *History of the Exchequer*, I, 625 ff. and 642 ff.

³¹ Madox, *op. cit.*, I, 657, 658.

of Magna Carta.³² The practice, however, of employing outsiders to fight, chiefly Provençals and Flemings, was followed not only by William Rufus and Stephen, but also by Henry I, Henry II, John, Edward I (in his French army), and Edward III.³³

In 1181, the Assize of Arms was passed. This was the first official enactment in regard to the bearing of arms in the post-conquest period. It sought to create a national militia based upon the idea of the old English fyrd.³⁴

The habit of assessing each portion of the country with a specific task of defense in case of danger arose in the reign of John. He had ordered in 1205 that the chief ports supply a certain number of ships; in this list the Cinque Ports had to furnish 52 for 15 days at their own expense.³⁵

Again, in 1214, Peter de Rupibus, Bishop of Winchester, acting as lieutenant of the kingdom while John was abroad, ordered the sheriff of Norfolk, Nicholas de Thorp, to cause a hundred men of Dunwich to be chosen, fit to guard the coast, with the words, "the expense will be accounted you at the Exchequer."³⁶ Whether this meant that the central government was to bear the burden is not possible of decision on this evidence alone. Probably the custom varied.

The fyrd came to be revived in order to use it as an instrument to check the feudal armies of the hostile barons. William Rufus summoned it in the first year of his reign for sieges of the castles of those who had revolted in support of his brother Robert. He made ill use of the summons when he called the fyrd in 1094, depriving the men of their ten shillings coat-and-conduct money from the shires³⁷ and sending them home.³⁸

Stephen employed it to check his enemies in the same way, at the Battle of the Standard; and Henry II used it in the rising

³² See Blackstone's *Commentaries*, I, 299. Whether this clause was inserted with any appreciation of the evil of employment of mercenaries in general, or simply to form another cause of complaint against the king might be a mooted question. The practice of the use of mercenaries was, of course quite common elsewhere.

³³ Rymer, *Foedera*, I, 1-3.

³⁴ Rymer, *op. cit.*, I, 37 (Rec. Com. Ed.).

³⁵ Ann. 6 Johann, A. D. 1205; *Rotuli Litterarum Clausarum*, I, 33.

³⁶ Ann. 16 Johann, A. D. 1214; *Rotuli Litterarum Clausarum*, I, 211.

³⁷ Coat-and-conduct money was an Anglo-Saxon institution.

³⁸ Chronicles of Florence of Worcester, sub anno 1094, in Oman, *Art of War*, p. 358.

of 1174.³⁹ When Robert of Belesme and his followers were in rebellion, with castles manned and stored, Henry I called the English fyrd for siege work.⁴⁰

The fact that they are taken for granted in the great charter of Henry I, the ground work of Magna Carta, shows that by this time military tenures with all their abuses were in full force in England. The military tenures thus supplied the king with a new kind of army, bound to him as lord and grantor of land. But the old idea of the fyrd was not abandoned; the two forms if military obligation were to go forward until the abolition of the one in the reign of Charles II.⁴¹ This gave to the king double power, that of feudal lord to command military service of his tenants and that of king of the English state to require it of every subject "according to the ancient assize." And the shrewd rulers kept both alive through use and played off the one against the other. Thus they were never at the mercy of rebellious barons.⁴²

The disordered state of the military establishment was apparent as early as the time of Henry II, together with the resulting confusion from the use of a dual system. The number of knights who could be summoned was very small, and this number was constantly reduced by evasions rendered possible by uncertainty over the debt owed. Henry II sent out a list of inquiries to his tenants-in-chief regarding their military obligations. The answers, in part available, show that most of the great baronage had subgranted the larger share of their estates, so that it was hard to trace the service owed.⁴³

The Norman plan of claiming direct feudal and military authority over every landholder had advantages, but failed as a military system because it neglected the principle that its efficiency rested upon the creation of a caste of warriors. Such a caste could be formed only upon the grant of exclusive privileges, and the English knights possessed no such special grants.

³⁹ Richard of Hexham, c. 321, quoted by Oman, *loc. cit.*

⁴⁰ Ord. Vit. XIII, 3, quoted by Oman, *loc. cit.*

⁴¹ 12 Car. II, Anno 1660. *Revised Statutes*, I, 725.

⁴² See pp. 14-15 of this volume.

⁴³ These are the answers which are partially extant in Hearne's *Liber Niger Scaccarii*. The questions were called the *Cartae Baronum*. These are referred to in Oman, *op. cit.*, p. 360, and note, where the whole question is considered.

There was no special privilege bound up with the tenure of a fief; there was no immunity from taxation as in France and Germany; on the contrary, the English knights had to pay all the imposts and very soon scutage as well. Again, the winning of a knight's fee lay open to all ranks of freemen, so that it could not be considered as the hereditary possession of a proud nobility. The grant of the honor of knighthood was the exclusive right of the sovereign, who converted it into an instrument of extortion. There was thus no inducement to the English knights faithfully to perform their service; the king took everything and gave nothing. At last they could endure the oppression no longer, and revolt was the result.

But such a development was fortunate for England and English institutions. The struggle for representative government had its origin in this revolt of the barons, and for a time, a crucial one, this military influence brought a powerful element to the side of the country and in opposition to Norman oppression. It also made negligible in the country the destructive influences of the feudal nobility, so troublesome in the contemporary development of the continental states.

In 1181, the famous Assize was enacted, the basis of all future acts relating to the military. It was the embodiment of the twofold character of the English military development up to that time, for it contained the requirements for the holder of the knight's fee as well as provisions for arming every freeman, the one Norman and feudal, the other Anglo-Saxon, the one based upon the military tenure, the other upon the principle of the *fyrð*.⁴⁴

Writs for the enforcement of the Assize of Arms appear frequently.⁴⁵ The Barons' War contributed little that was new to English military history. Both sides used mercenaries with the shire levies, while the *fyrð* appeared chiefly on the knights' side.⁴⁶

⁴⁴ The provisions may be had in Fortescue, *History of the British Army*, I, 12.

⁴⁵ *Letters of Henry III*, I, 232-33, 356, 357, 371, 402, 403 (Rolls Series); *Registrum Malmesburiense*, II, 390, 391 (Rolls Series).

⁴⁶ The rebel Earl of Leicester had with him at one time three thousand Flemish mercenaries while the Constable Humphrey de Bohun and the earls of Arundel and Cornwall employed some of King Henry's stipendiary horsemen. The shire levies of Suffolk and Cambridge fought mostly for the king, chiefly because of feeling against the Flemings, who had ravaged Norfolk. See Mat-

Little national sentiment existed upon which to base anything like a voluntary force. True, resentment against foreigners prevailed,⁴⁷ but this may hardly be called nationalism.

With this general background it is possible to introduce a suggestion as to the form of military summons employed in this period, as the prototype of the Commission of Array. Though it is impossible to find trace of the Commission as such, there are forms or orders comparable with it. In the reign of John, for example, specific commissions went out under the royal seal nominating persons to perform definite tasks, military, non-military, and quasi-military.⁴⁸

In these we see the early practice of commissioning persons to look after the performance of specified tasks. In an order issued by King John in May, 1202, we have the typical form of military summons and something that serves as a prototype for the later Commissions of Array. Directed to the knights of Flanders, Hainault, and Brabant, it contains the significant phrase *robis remunerationem faciemus de terris et pecunia*.⁴⁹

thew Paris, *Hist. Angl.*, p. 381. Henry III, in 1223, ordered the sheriffs to impose the oath upon all those who had been *jurati ad arma* in the reign of John (*Rotuli Litterarum Clausarum* 1, 628), and in 1231 ordered them to supply fixed contingents of men at arms, to be provided by the men of the county under the Assize of Arms. (*Select Charters*, p. 359; Stubbs, *op. cit.*, II, 221).

⁴⁷ Henry III and the barons quarreled over the entrance of "alien harpies." *Letters of Henry III*, (Rolls Series), Vol. II, Introd. The Provisions of Oxford in 1258 had sought to exclude aliens from command of the royal castles and fortified places. Both sides were ready to make use of foreign aid, and the objection was inspired by the natural opposition rather than by nationalistic sentiments. See letter of Henry III to Louis IX of France in regard to attempts to raise an army in Poitou and land it in England *contra voluntatem nostram*, on the one hand, and also reference to the *dextrarii* which the Earl of Leicester was endeavoring to import on the other. Rymer, *Foedera*, I, 405; quoted in *Letters of Henry III* (Rolls Series), Vol. II, Introd., p. ix and note.

⁴⁸ Ann. 6 Johann, A.D. 1205, *Rotuli Litterarum Clausarum*, I, 33. This related to supplying ships for the state. Page 211 related to an order of Peter de Rupibus, Bishop of Winchester, Lieutenant of the Kingdom, to the sheriff of Norfolk to choose men to guard the coast. Page 117 was less military in purpose. It was an order to the sheriff of Southampton to draw men to repair a dock. Again, in 1214, we find the appointment of a commission "to preserve the King's peace." Rymer, *Foedera*, I, 1101-1273, taken from the Patent Rolls, 15 Johann., m. 4.

In April, 1205, the king directed the sheriff of Rutland to arrange for the finding and payment of troops for the defense of the realm. See Rymer, *Foedera*, I, 92. (Rec. Com. Ed.).

In 1208 the marines and merchants were requested to aid the barons of the Cinque Ports, in "arresting" ships in the seas. *Ibid.*, I, 96.

⁴⁹ *Quod Milites Flandriae, Hanoniae et Brabantiae venirent in servitium Regis: Rex &c. Omnibus Militibus, Flandriae, Hanoniae et Brabantiae, ad*

The Cinque Ports were charged with the finding of 52 ships for 15 days in 1205, and steps were taken to found a dockyard at Portsmouth, the expense of the latter to be borne by the state.⁵⁰ At about this time the expression "at our expense" came to be frequently used in requests for services.⁵¹

The haphazard growth of England's military system went on under Henry III; hybrid in origin, it continued with even greater abuses than before. Nominally the national force was now composed of the tenants-in-chief, with their armed vassals, the minor tenants-in-chief, and the freemen subject to the Assize of Arms, enforced through call of the sheriff.

By the reign of Henry III the military summons had become fairly common in the form of writs to persons obligated to render such service,⁵² writs to officials to call the barons,⁵³ writs to enforce the Assize of Arms,⁵⁴ orders to the sheriffs to provide provisions,⁵⁵ to earls to bring their knights,⁵⁶ and instructions to assemble ships.⁵⁷

In June, 1217, the king ordered that the Charter of Liberties be read in the counties by the sheriffs.⁵⁸ An interesting suggestion is given in the records of the year 1220, when Pope

quos praesentes litterae pervenerint, salutem.

Mandamus vobis quod venialis ad nos ita parati equis, & armis, & cooperturis, froenis ad equos, & aliis armaturis, ita quod possitis honorifice morari in servitio nostro; et secundum servitium, quod nobis facietis, vobis remunerationem faciemus de terris & pecunia.

Et fidem habeatis hiis Limonde Haveret, dilectus & fidelis homo noster &c. 1202, Ann. 4, Johann. Patent Rolls, 4 John, n. 26, in Rymer, *Foedera*, I, 129 (Original Edition.)

⁵⁰ *Rotuli Litterarum Clausarum*, pp. 1205, 1214.

⁵¹ Impressment of ship wrights, *ad libatones, nrs, Rotuli Litterarum Patentium*. (Ann. 7, Johann, m. 6, p. 62.) (Here and in some other instances an abbreviated form of the Latin has been used, and marks indicating omissions of letters have not been included.)

Seamen to aid in defense in the same year and to assemble at Portsmouth, *recepturi ibi libatones*. (*Ibid.*, p. 65.)

Men to navigate our large ships "at our cost" (*Ibid.*, p. 52.) Ships to be sailed "*ad eundu i sviciu nrm ad custi nrm.*" (*Ibid.*, p. 80.)

⁵² *Registrum Malmesburiense*, II, 390, (Rolls Series), gives an example of military summons.

⁵³ *Letters of Henry III*, I, 402-3 (Rolls Series).

⁵⁴ *Ibid.*, p. 371. Henry, Bishop of Rochester, is ordered to assist in the enforcement in Kent. The order was usually to the sheriff.

⁵⁵ *Ibid.*, p. 357. To sheriff of Berks to supply food, *et cetera*.

⁵⁶ *Ibid.*, p. 357. To Ralph, Earl of Chester and Lincoln, to "bring your knights."

⁵⁷ *Ibid.*, p. 356. The sheriff of Dorset is ordered to assemble ships at Portsmouth in July, 1229.

⁵⁸ Rymer, *Foedera*, I, 147, 150 (Rec. Com. Ed.).

Honorius III expressed a "desire" that no one person should have the custody of more than two of the king's castles at the same time.⁵⁹ Sheriffs were held responsible for the prevention of "aid to the enemy," when a royal decree of July 11, 1223, ordered the sheriff of Devon to see that no victuals were conveyed into the land of Llewellyn and his adherents, who were in revolt.⁶⁰ This revolt of Llewellyn, who had besieged the castle at Buelt, led also to a writ of summons to tenants by military service to serve the king;⁶¹ the writ summoning the barons was worded differently.⁶² These orders are typical of the period. About a year later the barons of the Cinque Ports were ordered to "prepare their shipping" for the king's service.⁶³

In 1230, a commission to the Duke of Brittany and others requested that "they induce" as many as they thought necessary to join the king's service.⁶⁴ From 1222 to 1224, the practice of naming an individual *custos marinus* over various

⁵⁹ *Ibid.*, p. 160 (Rec. Com. Ed.); I, 240 (Original Edition).

⁶⁰ *Ibid.*, p. 160 (Rec. Com. Ed.); I, 260 (Original Edition).

⁶¹ The writ, which is significant, follows:

Rex Vicecomiti Norff. & Suff. Salutem:

Scias nos audivisse, pro certo, quod Teulinus castrum de uelt, quod est Reginaldi de Braos, obsedit cum multitudine armatorum; et ideo tibi praecimus quod statim, visis litteris istis sine omni dilatione, summoneri facias, per totam Ballivam tuam, Archiepiscopos, Albates, Priores, Comites Barones, Milites, et omnes alios, qui de nobis tenent in capite per servitium militare: Quod praedicti Archiepiscopos, Albates et Priores, sub omni festinatione, Milites Suos ad nos militant versus partes Gloucestriae, ad quas in propria persona nostra tendimus, equis et armis bene paratos. Et quod Comites, Barones, Milites et alii praedicti similiter ad nos veniant, sub omni festinatione, versus partes illas, ita parati equis et armis quod eis grates scire debeamus.

Teste Huberto de Burgo &c. apud Westm. 12 die Septembribus, [Same to all Vicecomites] A.D. 1223, Am. 7, H 3. Claus. 7, H 3, m. 2 d.

⁶² The writ, which is significant, follows:

Rex Ricardo de Percy Salutem. Sciatis nos audivisse, pro certo, quod Teulinus castrum de Buelt, quod est Reginaldi de Braos, obsedit cum multitudine armatorum; et ideo vobis mandamus, rogantes quatenus in fide, qua nobis tenemini, sub omni festinatione, versus partes Gloucestriae, ad quos in propria persona nostra, sine mora, tendimus, ad nos accedatis, cum gente vestra, ita parati eques & armis quod grates vobis scire debeamus.

Teste est supra.

Eodem modo scribitur Comitibus, Baronibus, Militibus, qui tenent de Domino Rege. A.D. 1223, Am. 7 H 3. Claus 7 H 3. m 2 d.

⁶³ Rymer, *Foedera*, I, 174 (Rec. Com. Ed.); I, 272 (Original Edition). The exact date is uncertain but it is generally assigned to the year 1224.

⁶⁴ *Rex, Omnibus ad quos &c. Salutem:*

Sciatis quod concessimus dilecto etc. nostro Petro, Duc Britanniae et (others)—quod alicere possint ad servitium nostrum quoscunque viderint nobis fore necessarios. Gratum et accytum habitum quicquid, in hac parte, nomine nostro, duxerint faciendum ad commodum et honorem nostrum. In cujus, etc.

Teste etc., A.D. 1230, Am. 14 H 3. Patent Rolls, 40, m. 2.

portions of the coast appears.⁶⁵ The naming of an official to assist the sheriff in views of arms is illustrated in 1230, when a list of men appears to enforce the Assize of Arms, *cum vice-comite* for each county.⁶⁶ Knights were asked "at the king's cost" to serve with the Count of Brittany in 1234.⁶⁷ In 1242, the king, at war with France, granted to the men of Bayonne the first thousand marks taken from the king of France and half the plunder.⁶⁸ In 1254, the sheriff of Wiltshire was directed to order all who held of the king *in capite* to meet their sovereign at Portsmouth ready to serve in Gascony.⁶⁹

Now followed the war with the barons led by De Montfort and the imposition of restrictions on the king's authority in military and other matters. But these proved of little influence at the time. The king spent a brief period in captivity after Lewes, and writs were issued by Simon de Montfort. Prince Edward, however, freed the king and overthrew and killed De Montfort at Eversham, and Henry was able to conclude his long reign in 1272 victorious.

The period closes with the death of Henry III and the accession of Edward I. Only the haphazard beginnings of a military system for England had been evolved, beginnings of a crude establishment combining features of the Anglo-Saxon and Norman systems. Nevertheless, in this same period certain commitments had been made and certain later developments presaged. The most notable of these were that the military phase of the feudal institution, if ever existing in England, was a failure, that reliance must be had on other practices in the raising and maintaining of a fighting force, and that such practices would tend to partake of both influences. It is prophetic of the dual growth from the remnants of the feudal military establishment on the one hand, declining but still a factor, and the Anglo-Saxon *fyrð* idea, on the basis of nationalistic appeal, on the other. Here originated also the practice of royal summons for specific tasks, out of which the more formal Commission of Array was to develop.

⁶⁵ Patent Rolls, Hen. III, 1216-25, pp. 337, 341, 347, 469, 492.

⁶⁶ *Rotuli Litterarum Clausarum*, 14 Hen. III, pp. 398 ff. See also pp. 395 and 529, providing for swearing to the Assize.

⁶⁷ Rymer, *op. cit.*, I, 212 (Rec. Com. Ed.); I, 331 (Original Edition).

⁶⁸ *Ibid.*, p. 248 (Rec. Com. Ed.); I, 408 (Original Edition).

⁶⁹ *Ibid.*, p. 295 (Rec. Com. Ed.); I, 493 (Original Edition).

CHAPTER III

THE EDWARDIAN PERIOD, 1272-1485

FOR military considerations the two centuries from approximately 1272 until 1484—the period of the three Edwards, Richard, the Lancastrians, and the Yorkists—may be taken as a unit. The characteristics of the Edwardian army as worked out, first, for the French wars, and secondly, for the Welsh and Scottish campaigns, remained the prevailing type down to the era of the Tudors, subject only to modifications to meet new situations.

The Edwardian period, if we may so designate this as a whole, was one of transition. In it we see the beginnings of a new understanding of war and of military service. The old feudal conception, in which the military tenants played the chief part, was giving way to a new theory, indefinite as yet, based upon the belief that war was a national undertaking, the “nation in arms” interpretation. It is in the rise of this view that we discern the earliest evidences of nationalistic tendencies, for “war is the best mirror of a state.” And as the Edwardian period reflects a spirit of nationalism, that trait is best illustrated in its military history.

It was true that the old conception of a national army represented by the *fyrð* had never entirely died out; even though, in the centuries following the conquest, main reliance had been placed upon the feudal army aided by stipendiary forces.¹

Evidences of the unsatisfactory character of the feudal army have been cited.² While the failure to develop a professional fighting caste in England may have been an advantageous thing for the country as a whole and for its institutions, it proved disastrous for military efficiency.

Henry II had been one of the first to see this weakness and this accounts in part for the Assize of Arms.³ King John had

¹ See p. 14 of this volume.

² See p. 16 of this volume.

³ See p. 13 of this volume.

depended largely upon mercenaries, and Henry III had engaged in no war which called for a marshaling of the national forces on a large scale. So the thirteenth century was productive of little progress. But the problems which Edward I faced necessitated action and an attempted solution of the difficulties. Almost upon accession he was confronted with a serious Welsh rising led by Llewellyn, and the Welsh wars dragged on until 1284. War with France and the conquest of Scotland called for military effectiveness. These taxed the tottering English army organization, consequently all the ability of the first Edward was needed to strengthen the weak spots.

Edward's dependence was first upon the feudal tenants. Mercenary troops had been so condemned that their use was hardly possible at that time.⁴ Repeated attempts in the early years convinced the sovereign of the futility of total dependence upon the feudal array. Responses were slow and numbers small, and efforts to compel service were frequent.⁵ These calls seem to have gone unheeded for the most part.⁶

The naming of an official, the *Capitaneus*, to look after the fulfillment of the military obligation is the outgrowth of this antipathy to service; this individual is the forerunner of the later commissioner of Array and lord lieutenant.⁷ Later appointments of a similar nature were made from time to time.⁸ This evidences the failure of the customary machinery to produce satisfactory results. Tenants *in capite* were also sum-

⁴ It is true that Gascons were used by Edward I, especially in the years 1282-83 and again in 1298; but in reality they were subjects of Edward as Duke of Aquitaine, so that this forestalled the usual criticism. The early dislike of the employment of foreigners as mercenaries may be interpreted in various ways. It can hardly be traced to a rise of nationalistic feeling at as early a date as this in history.

⁵ J. E. Morris (*The Welsh Wars of Edward I*, pp. 36 ff.) deals in detail with Edward's problems in this connection. Compare with Round, *Feudal England*, pp. 296 ff.

⁶ *Parl. Writs*, I, 5, No. 1, for "all who hold *in Capite*." Also pp. 193-95, about 130 tenants; pp. 195-96, Nos. 2, 5, 6, included ecclesiastics and female tenants *in capite*. A special appeal to the sheriffs occurs on December 12, 1296. (*Parl. Writs*, I, p. 196, No. 4). In December, 1276, a writ of military summons was issued to the earl of Lancaster and 177 others for service against Llewellyn, in Wales. See Rymer, *op cit.*, I, 537-38 (Rec. Com. Ed.); II, 73, 74, 75 (Original Edition). These efforts seem to have largely failed.

⁷ Rogerus de Mortuo Mari (Roger Mortimer) was named *Capitaneus* for Salop, Stafford, Hereford, and adjoining Marches, November, 1276, *Parl. Writs*, I, 193; *Rot. Pat.*, 4 Edw. I, m. 2, 1276.

⁸ *Ibid.*, 221, 222, 227, 243, 252, 254.

moned in 1276.⁹ The archbishops of Canterbury and York, all the bishops of England and Wales, twenty-five heads of religious houses, including four abbesses and eleven female tenants *in capite*, were called in the same year.¹⁰

In 1277, the old difficulty arose, caused by the knights departing when their time of service expired, although in the midst of a campaign. Edward appealed to them to prolong their stay, "their consent not to turn to their prejudice in the future."¹¹ This shows how carefully the tenants were guarding their military obligation and resenting anything that would serve as a precedent for encroachments by the sovereign in such matters.

The need of knights for service, and the unwillingness of those qualified to assume the burdens of their rank, led to the introduction of distraint with the order to all sheriffs to compel "all persons within their bailiwicks siezed of lands to the amount of £20, yearly value, or one entire knight's fee, whether held of the king *in capite*, or of any other lord, and who ought to be knights and are not, to take upon themselves the degree of knighthood before next Christmas."¹² That there was a considerable number of such persons qualified for this honor but apparently unwilling to undertake the burdens attached thereto is evidenced by the fact that the sheriff of one county returned the names of thirty-six, *qui habent XX libratīs terrae*; eight, *de illis qui tenent de D n̄ o Rege in capite*, but who did not comply.¹³ Proof is not lacking that the distinction was not sought for.¹⁴ Commissioners were named in the counties of England to see to it that the sheriffs executed the order for distraint in 6 Edw. I.¹⁵ Further distraint was to be made.¹⁶

⁹ *Rot. Claus.*, 5 Edw. I, m. 12 d.

¹⁰ *Ibid.*, quoted by Palgrave, *Parl. Writs*, I, 193, 196.

¹¹ *Rot. Pat.*, Edw. I, m. 6, in *Parl. Writs*, I, 213, No. 14.

¹² *Rot. Claus.*, 6 Edw. I, m. 8 d, in *Parl. Writs*, I, 214, No. 1. Edward I was not the originator of the practice of distraint; he used the expression "we and our ancestors have been wont to exact the taking up of knighthood" (*Select Charters*, p. 457). The Anglo-Saxons also compelled ceorls to enter thegnhood (Thorpe's *Early English Laws*, pp. 79-81). Henry III had approached the practice in 1223 and 1231 (*Rot. Claus.*, I, 628; *Select Charters*, p. 359).

¹³ MS Harl., 1192, 56 b., MS Cott. Claud., C. 2, fol. 87 (3), quoted in *Parl. Writs*, I, 216. This specific return was for Northumberland.

¹⁴ The fact that sovereigns had to continually press for acceptance of the supposed honor supports this. See note 12 above.

¹⁵ *Rot. Claus.*, 6 Edw. I, m. 8 d, in *Parl. Writs*, I, 214, No. 1.

¹⁶ *Parl. Writs*, I, 219, No. 1.

In 1285, the king modified his order, temporarily at least, in a writ, "in consideration of the good and gratuitous service performed by the Comitatus of the kingdom against the Welsh," excusing all "those who held less than £100 from receiving knighthood."¹⁷ In 1292, he again ordered that all persons holding lands to the amount of £40 "in fee and inheritance" and who had been seised of the same for more than three years, "who ought to be knights and are not," be required to become such by Christmas next.¹⁸ Finally, it was ordered that in all counties the sheriffs seize the lands of those who failed to comply with the above orders, hold them, and make a report of same to the Exchequer.¹⁹

This material throws a flood of light on the difficulties attendant upon compulsory feudal military service and the problems of enforcement; it well illustrates the attitude of the country toward this kind of obligation and the failure of the honor of knighthood to attract where the position involved strenuous obligations and few accompanying immunities.

In 1282, the practice of pressing promiscuously for military service was resorted to. "*Whillielmus le Butiller, de Weren-ton*" was ordered in a commission July 30, 1282, to elect, or "press," a thousand men fit to bear arms in Lancashire.²⁰ By Anglo-Saxon usage the right to compel military service had always existed, but the particular methods of press gang were new, though possibly based on ancient usage.²¹ Of course the Assize of Arms implied compulsion, and the Statute of Winchester, soon to follow (1285), was to make this compulsion more definite and provide ways for carrying it out.

The order of July 30, 1282, was epoch-making. It was the first step in the creation of a national army, containing, as it

¹⁷ *Ibid.*, p. 249.

¹⁸ *Parl. Writs*, I, 257.

¹⁹ *Rot. Fin.*, 21 Edw. I, m. 25, in *Parl. Writs*, I, 258 and 267, No. 3.

²⁰ *Rot. Wall.*, 10 Edw. I, m. 4, in *Parl. Writs*, I, 228, No. 15.

²¹ See Hutchinson, J. R., *The Press Gang, Afloat and Ashore*. Blackstone, Mansfield, and others upheld the practice of pressing "founded upon immemorial usage," and allowed the custom in that "for ages, private mischief had better be submitted to than that public detriment should ensue" (Mansfield, quoted by Hutchinson, *op. cit.*, p. 16). The word pressing is thought to have come from the old word "presting" (prest being the English equivalent of the obsolete French word, "prest," now "prêt," meaning "ready.") The acceptance of the "king's shilling," voluntarily or under duress, by the recruit constituted the contract between king and subject. Apparently Blackstone did not think that duress voided this contract.

did, the principle underlying all future legislation in this direction. Even then it was not without its forerunners; John had threatened it in 1205, Henry had approached it in calling the *posse comitatus* in 1267, while Simon de Montfort had asked for so many men from each county. But the direct assignment by the king of a definite number of men to be pressed, if it should be necessary, with an official commissioned to enforce the decree, and with payment (for both soldiers and commissioners) to come from the central government, was a distinct and significant departure.²²

In the writ of December 6, 1282, issued from Rhuddlam, we find the first designation of such persons named to look after the raising of troops, as commissioners of Array.²³ The titles sheriffs, *capitanei*, *custodes pacis*, and *captanei et custodes pacis*, together with *chevetaines* (a little later), had all been applied to men concerned with the raising of troops, but from now on that of commissioner of Array was most frequently used. The task of mustering troops, chiefly the footsoldiers of the shire quotas, was their work.²⁴

In 1285 came the Statute of Winchester, a more formal embodiment of the principles enunciated in the Assize of Arms, with greater emphasis upon the mandatory feature and a more orderly method of fulfillment.²⁵ The haphazard methods of compliance characteristic of earlier periods were being supplanted, and in this change the Commission of Array was to play an important part. It was the formal order and compliance with or disregard of it that constituted the test of service. The statute of 1285 was subject to many subsequent confirma-

²² Bishop Stubbs (*Const. Hist.*, II, 297, 568 ff.) connects the enforcement of military service at this time with purveyance. He argues that the Commission of Array was in reality a purveyance of soldiers. His theory is that out of the rights of the king in the Assize of Arms the practice of compelling a fixed quota and the royal right of impressment sprang, also "the unconstitutional commission of array." Historical precedents do not seem to justify such a conclusion; the theory of purveyance may have some connection with the sovereign's right to military service, but the historical backgrounds surveyed in this paper seem to point to other origins.

²³ *Rot. Wall.*, 11 Edw. I, m. 4, in *Parl. Writs*, I, 245, Nos. 4, 5, 6, 7.

²⁴ The parliamentary writs of Edw. I and Edw. II are full of Commissions of Array from this time on.

²⁵ 13 Edw. I, c. 6, *Stat. of Realm*, I, 96. This statute does not contain a direction to commissioners of Array to look after performance of the military duty. This work was to be done by a view of armour twice a year by the constables reporting to the justices of the peace.

tions.²⁶ It remained the basic embodiment of the military obligation, subject, of course, to varying interpretations,²⁷ until its formal repeal in the reign of Philip and Mary.²⁸ Edward, in his efforts to ground a national military force, made strong attempts to have the provisions of 13 Edward I complied with.²⁹ The close association between the military and police duties in this period is shown by the question contained in the Articles of Inquiry, a law which aimed at enforcement of the statute, as to whether the sheriffs had made pursuit for keeping the king's peace "according to the statute."³⁰ Reference to the "hue and cry"³¹ in the Articles is another point worth noting.

With the establishment of these fundamental principles of military service, together with methods of enforcement, the Commission of Array could be more widely used, and we find their recurrence repeatedly from this time on.³²

The Commission of Array took the form of an order from the king to the sheriff and certain specified persons to raise a definite number of men in the country, usually foot soldiers, for the king's service.³³ The publication of the order would then constitute a royal summons to arms under the direction of the arrayers named. The number of persons to whom the Commission was directed might vary, but the sheriff was always included. The commissioners might, in turn, name deputy commissioners to serve in the lesser areas. The powerful nobility, supporters of the king in each locality, were, of course, selected for the work. The Commission in its early form seems to have been based largely upon the feudal conception of the military obligation, but later it contained more of an appeal to

²⁶ 28 Edw. I, c. 17, *Stat. of Realm*, I, 140.

2 Edw. III, c. 6, *Ibid.*, p. 259. 28 Edw. III, c. 11, *Ibid.*, p. 347.

5 Edw. III, c. 14, *Ibid.*, p. 268. 7 R. II, c. 6, *Stat. of Realm*, II, 33.

²⁷ See pp. 140 f., below, bearing on varying interpretations.

²⁸ 4 and 5 Phil. and Mary, c. 3, *Stat. of Realm*, IV, I, 36.

²⁹ For example, the Articles of Inquiry, passed in 1306. 34 Edw. I, *Stat. of Realm*, I, 245-46.

³⁰ 34 Edw. I; *Ibid.*

³¹ *Ibid.* After all, the maintaining of order was the common object of both police and military systems, the checking of disorder from within or from without, so it is not surprising that no clear distinction existed. In fact, at the present time, the two are merged under certain conditions.

³² *Parl. Writs*, I, 247-48, Nos. 11-13; I, 266, No. 2; I, 270, No. 15; I, 295-96, Nos. 28-35; I, 326; I, 370-71 et *passim*.

³³ See Appendix, p. 195, for typical Commissions of Array.

the loyalty and devotion of the subjects. The use of the Commission of Array did not preclude the use of the usual form of military summons directed to the military tenants.³⁴

After the subjugation of the Welsh counties, commissions were employed there.³⁵ Some use of them was also made in Ireland, though this did not prove a fruitful ground.³⁶

The men raised under the Commission might be asked to serve beyond the seas,³⁷ or they might be asked only to defend the home county, or the coast, in time of impending danger.³⁸

At times, by means of the Commission certain counties would be called upon to undertake the defense of specified areas. Thus, in this period a commission was issued for the array and defense of the counties beyond the Trent, with supervision intrusted to the Bishop of Durham.³⁹ *Custodes* of the seashores might be named at the same time.⁴⁰ Commissions of Array appear for the Scottish wars in this area.⁴¹

In the course of the organization of his forces Edward I introduced the principle of *ad vadia nostra*. His writs for the distraint of knighthood were attempts to create a cavalry force from a group having sufficient means to bear this burden and accustomed to horses.⁴² The Statute of Winchester had attempted to classify the national army and arranged for views twice a year. The Commission of Array was the means whereby this force was called. In theory, at least, the nation was for the first time capable of being put under arms. Then,

³⁴ *Parl. Writs*, I, 5, No. 1; I, 193-95, 196, No. 2, 5, 6. These included summons to female tenants *in capite* as well; I, 245-46, No. 8; I, 259, 260, 261; I, 281, No. 4.

³⁵ *Ibid.*, I, 380, No. 5 (A writ of June 3, 1307, for Glamorgan).

³⁶ At least their use was not common in Ireland.

³⁷ *Parl. Writs*, I, 270, No. 15. In 1295, for an expedition to Gascony, crossbowmen and archers were summoned from Dorset, Southampton, Wilts, Essex, and several other counties "ready to cross the seas."

³⁸ *Ibid.*, I, 268-69, Nos. 6-11. In 1295 a French expedition was feared, and Essex, Norfolk, and Suffolk were called upon for men to guard the sea coast. This duty was irksome to the people, as appeared by the chronicle of the Monk of Dunstaple (*Chron. de Dunstaple*, p. 642, in *Parl. Writs*, I, 22, note 1).

³⁹ *Parl. Writs*, I, 270, No. 16. In 1369 the king appointed *custodes pacis* for all the counties of England, with special functions of acting as commissioners of Array in addition (Rymer, *Foedera*, III, pt. 2, p. 863).

⁴⁰ *Ibid.*, p. 272, Nos. 1 and 2.

⁴¹ *Ibid.*, I, 300; I, 304, No. 4; I, 370-71; I, 380, Nos. 4 and 5.

⁴² See p. 24 above in regard to attempts to enforce knighthood to augment the military class, especially the supply of capable horsemen.

in 1282, a new and distinct move was made. Preparatory to resisting the Welsh revolt of that year, Edward wrote to six earls and many tenants-in-chief asking them to take the field *ad vadia nostra*.⁴³ The use of these words to earls and great feudatories was quite unheard of. This practice is very distinct from the mere employment of mercenaries, who had hitherto been frequently used. It is significant as evidence of the failure, or disruption, of the military feature of the feudal institution.⁴⁴

From now on evidences of this form of paid military service are frequent. Feudal levies continued to be called in the usual feudal method, but the characteristic of pay, the distinctive feature of the soldier,⁴⁵ is to appear in this notable period of transition from the feudal army, whose service is based on the feudal obligation, to the national army serving "at the king's pay."

Still another method of raising armies, though its discussion falls but incidentally within the compass of this study, needs to be mentioned, namely, the recruiting of troops by contract. It does affect the issue in that it is necessitated by the failure of the old feudal methods of maintaining the military establishment. The largest and best example of this practice was the contract taken by the earl of Surrey for troops in the Scottish wars of 1297-98.⁴⁶

Now the Commission of Array comes to recite the king's wage as an inducement,⁴⁷ and some even offer a bounty in addition.⁴⁸ That the system was still far from regular, and that practices were not uniform are shown by the creation, in 1298,

⁴³ *Ibid.*, I, 222. Also Rymer, *Foedera* I, 610 (Rec. Com. Ed.).

⁴⁴ See Morris, J. E., *The Welsh Wars of Edward I*, pp. 75 ff. for a careful treatment of this period and especially of the innovation of Edward in introducing this particular form of paid military service. See, also, Tout, chapters in *Mediaeval Administrative History*, II, 131-45, on Edward's War-time System.

⁴⁵ The derivation of the word is significant of this—"soldier," from *soldus*, pay.

⁴⁶ Morris, *op. cit.*, p. 79.

⁴⁷ See examples in *Parl. Writs*, I, 295-96, Nos. 28-35; I, 299-300, Nos. 42, 43.

⁴⁸ *Parl. Writs*, I, 326, and I, 43, note 1. One of these, the writ of November 21, 1299, was a Commission of Array reciting that if the foot soldiers were unwilling to march on account of the "bad money" current in the kingdom (probably reference *de falsa moneta* imported by the Flemings and dealt with in 27 Edw. I), or because of the inclemency of the weather (an interesting sidelight on difficulties of getting Englishmen to render military service!) they should be promised a bounty beyond the regular pay.

of the office of chevetaine (*chevetayne* or *chevetaigne*). Under this officer all persons holding lands, tenements, or other estates were to muster.⁴⁹ He was given power to distrain and amerce persons disobeying his commands.⁵⁰

The crisis of 1297 and the steps taken to avert it well summarize the accomplishments of Edward from a military point of view. The nation was called upon for foreign wars and for home defense; the various groups who owed service were called, and use was made of every resource thus far developed. Freeholders possessing £20 per year in lands were asked to report, with horse and arms, for duty with the king, either in distant areas or at home. This applied whether or not they held of the king in chief. The order was transmitted through the sheriffs, and those called were enjoined to meet their sovereign at London "preparatory to cross the sea with him in person, to the honour of God and themselves and for the salvation and common benefit of the realm."⁵¹ All ecclesiastics and widows were likewise called if they owed service. To make the demands searching, the sheriffs were severally directed to supply lists of freeholders and knights who were subject to the above summons. This was followed by the issuance of Commissions of Array for the selection in each county of men for defense against the Scots; the following fall Commissions of Array were again ordered for the raising of 23,000 men, to be recruited in eleven northern and western counties, and 64,000 more in Wales and Cheshire.⁵² Thus was the country quite thoroughly marshaled for military service, on the basis of the feudal and national obligation, and the climax was reached in

⁴⁹ The first appearance of the term in a Commission of Array is in 1298 (*Parl. Writs*, I, 319). Again in 1303, it is used when a chevetaine is named for Cumberland and Westmoreland (*Ibid.*, pp. 372-73, Nos. 23 and 24), and yet again in the same year for Northumberland (*Ibid.*, p. 368, No. 7).

⁵⁰ *Parl. Writs*, I, 340.

⁵¹ Stubbs, *Const. Hist.*, II, 299-300, from which account this picture of the military preparations at this time are drawn. The occasion was the contemplated expedition into Flanders coupled with Wallace's rising in Scotland. Prince Edward was left as Regent. This was also the period of the famous *Confirmatio Cartarum*. In 1297 the case against Roger Bigot, Earl of Norfolk, and Humphrey de Bohun, Earl of Hereford and Essex, arose over the question as to whether the earls and barons were bound to serve abroad under anyone but the king in person. The whole problem of the nature of the military obligation was before the court and is discussed in later chapters (Chaps. VIII-IX).

⁵² *Ibid.*, p. 300.

the development of the military establishment under Edward I.

In 1297, a writ of military summons omits the customary expressions, *in fide et homagio*, or *in fide dilectione*, and is unusual, as Palgrave observes, because it is grounded on a writ of general summons.⁵³ A general summons had been issued, and, when objection was raised, the king attempted explanations in justification: *Excusavit etiam se Rex de exactionibus et prisis, quas a populo suscepit dicens, se incepta proseguere non posse, nisi eorum subiret larga manus, praecepitque cum non suam tantum, immotocius populi ageret causam, tanquam protector eorum et defensor*, as the chronicler tells it.⁵⁴

The disturbed reign of Edward II was to witness a setback in the orderly development thus begun. The abuses of the period included the unpopular purveyances. These were extended to include men so that, as Bishop Stubbs contends, the "Commission of Array becomes little else than a purveyance of soldiers."⁵⁵ The king adopted the practices of his predecessor in part, but refused, among other things, to act as paymaster for the shire levies, still demanding this of the counties and towns.⁵⁶ Excessive requests for service with refusal to assume these obligations were the causes, in part, of the demands in the reign of Edward III for the limitation of the king's right to compel military service.⁵⁷ Outside of the abuses, Edward II followed in the main the practices of the previous reign. In 1307, the Earl of Richmond was named King's Lieutenant and *Custos* of the land.⁵⁸ In the same year "Conservators of the Peace"

⁵³ *Rot. Claus.*, 25 Edw. I, m. 15 d. and quotation by Palgrave, *Parl. Writs*, I, 29, note 1.

⁵⁴ Walter of Hemingburgh, *Chronicle*, pp. 113, 114, quoted by Palgrave, *op. cit.*, I, 29, note 2. Palgrave also quotes an explanation and justification published by the king, through all the sheriffs in England.

⁵⁵ Stubbs, *op. cit.*, II, 568. This interpretation of the Commission of Array is hardly correct, though it did have a slight connection with the evil of purveyance, especially in this period, perhaps. But the fact that the Parliament approved the arrays by ordinance removes it from the exclusive scope of royal action and thus raises doubt as to whether it may yet be associated with purveyance. In December, 1325, commissions were issued from Bury St. Edmunds to arrayers in various counties, *pursuant to an ordinance made in the last Parliament* (Patent Rolls, 1324-27, 19 Edw. II).

⁵⁶ *Parl. Writs*, II, pt. I, pp. 408, 414. This was in 1311, when armed men were demanded to be paid for by the townships for seven weeks. See also *Ibid.*, II, pt. I, 431, after Bannockburn; II, pt. I, 457 (in 1315); II, pt. I, 479 (in 1316); II, pt. I, 505, 510 (in 1318); II, pt. I, 668 (in 1324).

⁵⁷ See p. 33, below, dealing with limitations in the reign of Edward III.

⁵⁸ *Parl. Writs*, II, pt. I, 369, Nos. 1, 2; also *Ibid.*, II, pt. II, 9, No. 41.

were designated.⁵⁹ In the early years, Edward offered pay for foreign military service but soon abandoned this.⁶⁰ In a Parliament at Lincoln in 9 Edw. II one foot soldier was charged upon each township throughout the country, regardless of tenures.⁶¹ In August, 1324, a Commission of Array, dated from Guilford, named Stephan de Cobeham, Randolph de Camoys, and Robert de Kendal to be in charge of mustering, the first two for West Kent and the last for East Kent.⁶²

By 1326 objections to, and disputes over, the interpretation of the Statute of Winchester became common, and only disorders and the importance of more pressing matters prevented limitations upon the rights of the king in this reign. The particular question of the method of assessing property, which had a close connection with the obligation of military service, was in dispute at one time. The king's contention was that the real value of property, not the former value, should be used in arriving at the amount of service due.⁶³ The inclusion of the words "pursuant to Parliamentary ordinances" appearing in the Commissions at this time is significant and indicates a desire to give the orders the support of that body.⁶⁴

In his final contest with the party of opposition, Edward made attempts to use the Commissions of Array to recruit support for his cause.⁶⁵ Some trouble was experienced in securing obedience to the writs.⁶⁶ It is rather prophetic of a similar use of the orders, by Charles I in a later period, and of that

⁵⁹ *Ibid.*, II, 369, Nos. 4, 5; 370, Nos. 10, 11. Reference to the keeping of the peace and the Statute of Winchester was made in a commission of December 24, 1307, naming the sheriff and other specified persons "Conservators of the Peace," to "reside constantly in their county . . . the Statute of Winchester, in all its articles and all matters contained therein . . . issued by Edward I, to be firmly observed" (*Parl. Writs*, II, pt. II, 8-9, Nos. 39-40). And again with regard to Cambridgeshire: (*Ibid.*, pp. 11, 12, Nos. 55 and 56).

⁶⁰ *Parl. Writs*, II, pt. I, 371, No. 15, read "to be at the king's wage from the time they pass beyond the bounds of the county until they return."

⁶¹ *Parl. Writs*, II, pt. I, 157, No. 22.

⁶² Rymer, *Foedera* II, pt. I, 565 (Rec. Com. Ed.). Edward at this time feared an invasion from France and was reluctant to rely upon the feudal troops of the powerful barons, whose enmity he had already incurred.

⁶³ *Parl. Writs*, II, pt. I, 737, No. 24.

⁶⁴ The Commission of January 21, 1321, named Commissioners of Array as "appointed pursuant to the parliamentary ordinance" (*Ibid.*, II, pt. I, 737, No. 24). Also this thought was contained in a later commission (*Ibid.*, II, pt. I, 738, Nos. 26 and 27).

⁶⁵ *Ibid.*, II, pt. I, 756, 758, No. 17; II, pt. II, 292, No. 15.

⁶⁶ *Ibid.*, II, pt. II, 294-95, No. 23.

sovereign's difficulty in obtaining compliance, though the conditions were somewhat different.⁶⁷

The succession of Edward III found dissatisfaction with the use and abuse of the Commission of Array. The general unrest of the previous reign with its attendant disorders found expression, in part, in objection to the military policy. The demand of the king that the counties and towns pay the wages of the troops was further extended in 1324 to include a purveyance of armour.⁶⁸ The arbitrary actions of the king's commissioners had aroused objections as well. A petition bearing upon these things was presented at Edward's first Parliament.⁶⁹ This demanded that men be not compelled to arm themselves at their own cost, contrary to the Statute of Winchester, or to serve beyond the limits of their respective counties, except at the expense of the king. Commissioners of Array were specifically mentioned in one of these petitions.⁷⁰

The result was the passage of a statute, 1 Edward III, limiting the power of the crown in matters of military service.⁷¹ It attempted to define the obligation in the terms of the old customs; it denied the right of the sovereign to insist upon anything more than those justified. It also recited that no man should be compelled to go outside his shire "but when necessity requireth and upon sudden coming of strange enemies into the Realm." This continued with an attempt to define the proper use of the Commission of Array.⁷² With some regard for these restrictions the military practices of Edward III followed those of Edward I. The restraining statute, 1 Edw. III, became the future basis for complaint, and when a controversy arose it was usually accompanied by requests that this law be confirmed. Such confirmation was offered.⁷³ However, violations of it took place almost as frequently.

In the fourteenth year of Edward's reign, the evil of purveyance was dealt with, and this indirectly affected the question

⁶⁷ See Chap. V.

⁶⁸ *Parl. Writs*, II, pt. I, 668, 677. This was an attempt to compel the counties to pay not only the wage but also the cost of armour.

⁶⁹ *Rot. Parl.*, II, 10, art. 9.

⁷⁰ *Ibid.*, II, 8-11.

⁷¹ 1 Edw. III, c. 5, *Stat. of Realm*, I, 255.

⁷² *Ibid.*, 7th clause.

⁷³ It was confirmed, for example, by Henry IV, in 4 Hen. IV, c. 13, *Stat. of Realm*, II, 137.

of the raising of troops through the Commissions of Array.⁷⁴ The right to the king's wages for service beyond the seas was confirmed in 18 Edw. III.⁷⁵ In 1351, Parliament undertook the first formal regulation of the matter in an attempt to assert control over the extent of military service to be rendered. In that year, it was decreed that no man should be constrained to military duty, other than those who held by such service, except "by common assent, or grant, made in Parliament, for that is contrary to the Law of the Realme."⁷⁶ A significant chapter had been written in English constitutional history and one that is not sufficiently emphasized. The assertion of control, even though partial and faulty, over the military resources of the country by the Parliament was a marked victory for that body. No other one thing could so definitely and certainly establish the principle for which that institution was contending, namely, the restriction of royal authority so as to render increasingly difficult the exclusive exercise of that authority over the armed forces of the realm. This beginning, made in 1351, reached its climax and its test in the Stuart period, when the precise question of the right to marshal the military establishment between the sovereign and the Parliament was the deciding factor in the contest of that era.⁷⁷

Turning from the theoretical regulation of the military by statute to the actual practice, the picture, as is to be expected, is not so bright. Soon the ambitions of Edward to profit by the experiences he had gained in the Scottish and Welsh campaigns tempted him into a war program in which the niceties of legal provisions were not always observed.

For the Scottish campaigns in 1339 the Parliament had ordered that the men raised should be paid by the counties until they reached the frontier and thereafter by the king.⁷⁸

⁷⁴ 14 Edw. III, stat. I, c. 19, *Stat. of Realm*, I, 288. The following statutes relate to purveyance: 3 Edw. I, c. 1; 4 Edw. III, c. 3; 5 Edw. III, c. 1; 14 Edw. III, stat. 1, c. 19; 18 Edw. III, stat. 2, c. 7; 25 Edw. III, stat. 5, cc. 1-21; 36 Edw. III, c. 2.

⁷⁵ 18 Edw. III, stat. 2, c. 7. *Ibid.*, I, 301. This was also confirmed in 4 Hen. IV, c. 13, *Stat. of Realm*, II, 137.

⁷⁶ 25 Edw. III, stat. 8, *Stat. of Realm*, I, 321.

⁷⁷ See Chaps. V, VI, VII.

⁷⁸ *Rot. Parl.* II, 110. The effect of this on 1 Edw. III is difficult of decision. Edward contended that this action voided the previous action, but the Parliament did not so agree. Both the *Rotuli Scotiae* and Bain's *Calendar of Documents Relating to Scotland* contain references to Commissions of Array.

This may or may not have freed the king from the restraining statute of the first year of his reign, but he proceeded as though he had been freed.⁷⁹ The Commons protested this action in 1344 and again in 1346 in petitions complaining of the burden it placed upon the counties, as well as because it was illegal.⁸⁰ In the Parliament of 1346, the authority of the king to use the Commission of Array without parliamentary approval is called in question, though apparently no action was taken.⁸¹ Soon after the king's return to England in 1347, a petition of complaints was presented, sixty-four in all, among which we find one regarding the illegal use of the Commission of Array.⁸² By now it is recognizable that the exercise of unlimited power by the king is dangerous, and steps to restrict it in some way are in evidence from this time on. But without precedent it was uncertain just where the lines should be drawn.

The nation was now laboring under heavy burdens, and it required all the statecraft of Edward III to prevent a crisis. But the king's promises and the glories of foreign successes⁸³ turned the tide in his favor and averted a general rising. Otherwise all the elements necessary to, and present in, the revolt of 1381 were there.

In spite of all the opposition to the Commissions of Array, they seemed to prosper. In the beginning of the wars they were used to raise the bulk of the English army; the muster rolls of the arrays in 1339 show 1,407 men-at-arms, 5,600 *armati*, and 5,600 archers raised by the various counties.⁸⁴

⁷⁹ I Edw. III, *Stat. of Realm*, I, 255, is the statute referred to.

⁸⁰ *Rot. Parl.* II, 149, art. 3. The parliamentary action did not seem to be at all times consistent.

⁸¹ *Ibid.*, II, 160, arts. 1-3. See discussion in Hallam's *Middle Ages*, III, 45. Cf. Stubbs, *Const. Hist.*, II, 415.

⁸² *Ibid.* This is one of the earliest instances of the protest being registered in connection with the Commission of Array. It began to be felt that the unrestricted use of this writ was subject to great abuse in which the subject suffered. Of course that was just the situation.

⁸³ Sluys, Crécy, Neville's Cross had been won; Calais had been taken after the long siege; and now (1356) Poitiers added to the brilliancy of English arms abroad.

⁸⁴ Rymer, *Foedera*, II, 1070. See Oman, *Art of War in the Middle Ages* for full description of the armies of Edward III. In the bundles labeled Chancery Miscellanea (Pub. Rec. Off., Bundles 1-14) are many illustrations of the use of the Commission in this reign and in the two previous ones also, in part as follows: Bundle I, Commissions and returns thereon for 25 Edw. I, 28 Edw. I, 6 Edw. II, 15 Edw. II; Bundle 2, the same for 16 Edw. II, 18 Edw. II, 19 Edw. II, 7 Edw. III, 12 Edw. III, 25 Edw. III. Other bun-

Subsequent arrays continued to raise large numbers, but in 1351 a limitation was again placed upon the king's power by a statute of the Parliament requiring its consent to constrain for military service.⁸⁵ To avoid the use of force and circumvent the law, the systems of indentures was practiced. This was but a form of employment of mercenaries, but by the policy of Edward it was restricted to Englishmen, and this gave it a different aspect in the eyes of the country.⁸⁶ In another way it was a resort to compulsion; the only difference was that the force was exerted by the agents of the king instead of by the king acting directly.

Indentures for many purposes are to be found from now on. These include the raising of forces, the garrisoning of fortresses, the performance of specific tasks of various kinds, as well as the supplying of foods, equipment, and arms.

The work of financing the Hundred Years War had been systematically undertaken by Edward III. A great source of wealth was coming to England from the gradual assumption of control of the wool trade by English merchants instead of by foreigners.⁸⁷ From these moneyed classes Edward drew support and thus financed the campaigns at Crécy and Calais.⁸⁸ Italian bankers had played the rôle to Edward I and Edward II and continued to do so with Edward III, but not to as great a degree.⁸⁹

Thus the reign of the last Edward came to an end. In it the English armies passed through, partly at least, that transition

dles contain similar examples. Bundle 5 is mostly Marshalsea Rolls made up of proffers of service. Bundle 6 relates to the Earl Marshal's Court and the Court of Chivalry.

⁸⁵ 25 Edw. III, stat. 8, c. 8, *Stat. of Realm*, I, 321.

⁸⁶ Bishop Stubbs aptly designates Edward's indenture system as old feudal ideas "now replaced by a combination of chivalric sympathy with mercantile precision." (Stubbs, *Const. Hist.*, Library Ed., III, 582-83). See *Rot. Parl.*, III, 94 and 118, for examples of indenture agreements in this period.

Rymer (*Foedera*, III, 510) cites one of the earliest of this kind, in 1360 between the king and Thomas Holland, Earl of Kent, in which the latter is to supply 6,000 men-at-arms, of whom 10 are to be knights, 1 a banneret, and 120 archers, all mounted. The use of the expression "at the King's wages" becomes common in the summonses of this period. *Vide*, Close Rolls, 7 Edw. III, 1333, 1337.

⁸⁷ Mr. Schuyler B. Terry treats of this important aspect of the reign in his work, *Financing the Hundred Years War, 1337-1360*. London, 1914.

⁸⁸ *Ibid.*, p. 4.

⁸⁹ Consult "The Italian Bankers in England and their Loans to Edward I and Edward II," in *Hist. Essays*, by members of Owen College, Manchester, 1902, quoted by Terry, *op. cit.*

period from feudalism to nationalism. In it the defective and fatal characteristics of the feudal military institution, as developed in England, became manifest and were recognized. This made possible the introduction of new elements, elements of a more nationalistic nature which were to lay the basis of a purely national military establishment. This era also saw the widespread use of the Commission of Array as well as the beginning of the abuse of that writ. Also in this formative period the English armies took on all the fundamental aspects that continued down to the Stuart period.⁹⁰

Richard II continued to make use of the Commissions of Array as means of raising military forces.⁹¹ When threatened by enemies from within, with the rise of the party of the queen and Mortimer, he appealed for men by a general Commission.⁹² In 1399, upon hearing of Lancaster's arrival, he ordered the county *custodibus pacis* to seize all enemies of the state.⁹³

The troubled years of the fifteenth century were to witness little improvement. They were to be concerned with further abuses of the Commissions of Array leading to successful demands for limitation of royal power in things military. In 1402, a statute of significance was passed, confirming 1 Edw. III and 25 Edw. III. It decreed that none should be distrained to go out of the counties for military service, except in case of "great necessity"; further, that men going out should receive the king's wage from the time they left the county, and that none should be compelled to serve at arms or find their weapons, "unless it be by Common Assent and grant made in Parlia-

⁹⁰ Fortescue, *The British Army*, Vol. I, Chap. II, has the best account of the military forces of Edward III. The Honorable George Wrottesley, writing in the *Historical Collections of Staffordshire* (Salt. Arch. Soc.), XVIII, 58 ff., gives a vivid picture of English armies before Calais in 1346. Froissart, writing of the same subject at a little later date (the army on the plain of Troyes in 1360), says: *Donc sonnèrent leurs trompettes parmi l'ost, et s'armerent toutes gens de toutes pièces, et étoient les seigneurs montés sur chevaux couverts et parés de leurs armes, dont les sambuës et les houssemens alloient jusque à terre, chacun sire dessous sa bannière ou son pennon. De voir les batailles des Anglois comme ils étoient rangés sur la champ et mis en trois batailles, les archers sur èle (Paille) et les gens d'armes en front, c'étoit grande plaisance à regarder* (quoted by Wrottesley in above description). These descriptions scarcely convey the whole picture.

⁹¹ Close Rolls, Rich. II (1377-81). Cf. Rymer, *Foedera*, VII, 154; VII, 162; VII, 199 (Original Ed.).

⁹² Close Rolls, 15 Rich. II (1389-92).

⁹³ Rymer, *op. cit.*, VIII, 84, 85 (Original Ed.).

ment."⁹⁴ The next year another statute was passed, which aimed to regulate the matter of impressments and establish a standard form for the troublesome Commission of Array, and so, it was later contended, legalize such writs.⁹⁵ It did seem to set up a standard form for the Commission and was used by Charles I as the law upon which he based his claim to the use of the writ for raising troops.⁹⁶ At the same time, the very clear intent of the law was to increase the power of Parliament over the military establishment. It has been explained that at this time the Commons were waging a contest with the king to secure exact enrollment of their petitions in statutory form.⁹⁷ The contention was that petitions when granted were not recorded as granted, and the Parliament asked to have the right to name some of its own members to view the enrollment of acts of that body. Just at this time, 1404, the question of the abuse of the Commission of Array came up, and the king submitted a form to be used as a model in the issuance of that writ in the future. The Commons changed it slightly, and the king, after consultation, agreed. This seemed to establish a definite form for the Commission and give it an approval of legality, but the Parliament had no intention thereby of establishing absolute control of the military in the hands of the sovereign.⁹⁸

Commissions of Array continued to be used. In 1403, they were employed in Kent to raise troops to march against the Percies.⁹⁹ Again in 1405, in the same area they were put into force for a similar purpose.¹⁰⁰ Henry IV made frequent use of them for both his Welsh and Scottish campaigns.¹⁰¹ They

⁹⁴ 4 Hen. IV, c. 13, *Stat. of Realm*, 11, 137. The clause bearing on necessity read—*Sinon p cause de necessitee de sodeigne venue destarnges esnemys en roialme*. That referring to the king's wage; *q gentz darmes hobelers & Archiers esluz pur en le s vice du Roy hors Denglet re soient as gages le Roy du jour quilz deptiront hors des Countees ou ils feurent esluz*. The reference to the assent follows: *q nul home soit arte de trover gentz darmes hobelers archiers aut s q ceux q tiegnent p tiel s vice sil ne soit p coe assent & ga nte faite en plement*.

⁹⁵ 5 Henry IV, c. 3, *Stat. of Realm*, II, 144.

⁹⁶ See Chap. VIII, below. Charles's lawyers cited both 4 and 5 Henry IV in support of their contention that Parliament had legalized the Commission of Array.

⁹⁷ Stubbs, *Const. Hist.*, III, 280 ff.

⁹⁸ See Stubbs, *loc. cit.* Also *Rot. Parl.*, IV, 526-27.

⁹⁹ Rymer, *Foedera*, VIII, 402 (Original Ed.). Patent Rolls, 3 Hen. IV and *passim*.

¹⁰⁰ *Ibid.*, p. 402.

¹⁰¹ *Ibid.*, VIII, 123, 273, 374.

were also resorted to in fear of impending invasions¹⁰² For the French wars they were widely used.¹⁰³ The armies of Henry V were made up of remnants of the feudal levy,¹⁰⁴ troops raised by indenture, and soldiers secured through the Commissions of Array serving at the king's wage. Henry VI issued letters under the privy seal for the raising of men, victuals, and ships.¹⁰⁵ In the reign of Henry VI, a law was passed aiming to prevent captains and other officers from imposing upon the men under their charge.¹⁰⁶ These impositions took the form of withholding some of their pay for petty offenses, making illegal deductions of small amounts for divers reasons, and the like. Men for service at sea as well as on the land were included in the commissions and were even ordered for requisitioning ships and supplies of all sorts.¹⁰⁷

The disorders of the last years of the reign of Henry VI make it difficult to ascertain the true state of the military. There are extant copies of letters sent out by the king in an effort to raise troops for his own defense, which follow the form of the Commission of Array.¹⁰⁸ The rebel forces, on the other hand, were recruited from the tenants of the Yorkists, the Nevilles, and such other malcontents as could be roused to action.¹⁰⁹

¹⁰² *Ibid.*, VIII, 123; IX, 253, 601. In 1414 the writ began: *De Arraitione, contra Invasionem Gallicorum, etc.* The clergy were also included as witness (in 1415) *De Arraitione Cleri* in 1418, *De Arraitione Cleri facienda* and again, *De Arraitione Cleri facienda contra Invasionem Gallicorum.*

¹⁰³ *Ibid.*, IX, 255. Commissions of Array for all counties were sent forth in May, 1415, to fill the requirements of Henry's Harfleur campaign.

¹⁰⁴ Feudal service persisted; for example, Edward III had only recently granted estates with the obligation to serve at Calais. Rymer, *op. cit.*, VIII, 456, 466.

¹⁰⁵ Ord. V, 265, quoted by Stubbs, *Const. Hist.* (Library Ed.), III, 299, note.

¹⁰⁶ 18 Hen. VI, c. 18 and c. 19, *Stat. of Realm*, II, 314. The statute also attempted to regulate desertion.

¹⁰⁷ Cobbett, *Parl. Hist.*, I, 99. There was no clear distinction between the army on land and the army on the water. Men and supplies for both branches, as well as ships, were raised in the same fashion.

¹⁰⁸ Rymer, *Foedera*, XI, 401-2 (Editio Secunda). Bishop Stubbs in this same material (*op. cit.*, p. 298, note) cites Rymer, XII, 401. This seems to be an error. The first of these summonses began: *De conducendo Posse Comitatus ad Rebelles Repeimendos* (1457). The language then follows the form of a Commission of Array. Another example is found in a Commission to the Earl of Pembroke, *de Proficiscendo contra Rebelles & de Intendo, etc.* (Rymer, *op. cit.*, XI, 444). Again Stubbs (*loc. cit.*) cites Rymer XII, 445. Rymer (Orig. Ed., XI, 440), quotes a Commission of Array of Feb. 10, 1460, to raise men to resist the Earl of Warwick.

¹⁰⁹ Stubbs, *op. cit.*, III, 298, note 2. An instance was an appeal of the Duke of York to the men of Shrewsbury in 1452.

During the Yorkist period of English history, the Commission of Array was used. In 1464 Edward IV employed it to raise troops; Bishop Stubbs characterizes the order as "peremptory but not illegal."¹¹⁰ Like orders were issued in 1468¹¹¹ and several times in 1470, the first reading, *Pro Duce Clarentiae, de Arraiatione facienda contra Rebelles*.¹¹² In 1480 a Commission of Array was issued to raise troops to be sent against the Scots.¹¹³ From the language it is clear that an attempt is being made to comply with the requirements for resisting an invasion. This would give the writ a color of legality. The opening words are, *Super Invasione Scotorum de Monstrationibus capiendis*.¹¹⁴

Edward IV also used the Commission of Array to raise forces to oppose the Lancastrians under the Duke of Clarence and the Earl of Warwick.¹¹⁵ Richard III resorted to the Commission in 1484¹¹⁶ and 1485.¹¹⁷

Little change was made in the character of the army as created by the Edwards, but more abuse of the military practices crept in during the laxity of the Lancastrian period. The question of the legality of the Commission of Array was unsettled in 1484 and so remained until the era of the Stuarts. The larger problem of the relation of the sovereign and the Parliament to the military establishment, definitely bound up with the Commission of Array, was also left open.

¹¹⁰ Rymer, *op. cit.*, XI, 524. Stubbs, *op. cit.*, III, 299, note 1.

¹¹¹ Rymer, *op. cit.*, XI, 624.

¹¹² Rymer, *op. cit.*, XI, 652. Also later in the same year *Contra Ducem & Comitem praedictos, de Arraiando* (*Ibid.*, p. 655), and in 1470 still another order was issued, headed, *De Arraiatione facienda* (*Ibid.*, p. 677).

¹¹³ Rymer, *op. cit.*, XII, 117. This writ continues after the salutation, *Cum nuper quidam de Scotia non obstantibus Treugis & Guerrarum Abstinentiis inter Nos & Consanguineum nostrum Jacobum Regem Scotorum initis & conclusis, Regnum nostrum Angliae, Villatas & Habitationes. Ligeorum nostrorum in Marchiis nostris ibidem Combruyendo, ac Ligeos nostros quosdam ex eis ut Prisonarios Capiendo, & quosdam Interficiendo & Depraedando & Mala quamplurima eisdem Faciendo, etc.*

¹¹⁴ *Ibid.* The above then appears in the body of the writ.

¹¹⁵ Mentioned by Col. J. Bonhote in *Historical Records of the West Kent Militia*, p. 19. This was an order to the sheriff of Kent and thirteen others to raise forces in that shire.

¹¹⁶ *Letters and Papers of Rich. III and Hen. VII*, I, 85 ff. (Rolls Series). Also, Harleian Miscellany, 433, f. 220, quoted in *Letters and Papers, Rich. III and Hen. VII*, I, Summary IX.

¹¹⁷ *Ibid.* Also Pat. Rolls, 1476-85, pp. 397-401.

CHAPTER IV

THE PERIOD OF THE TUDORS

THE accession of the Tudors found the military establishment, like everything else, in sad disorder. The Edwardian attempts at organization of a classified national force had been frustrated, first, by the sad results of the Lancastrian efforts in France, and, second, by the civil disorders of the Yorkist period.

The newer industrial tendencies were turning the attention of Englishmen more and more away from war and toward peace. With the ambitions of some of her sovereigns yet unappeased, as far as European designs were concerned, with military problems in Scotland and Ireland, with civil disturbance within and the possibility of invasion from without, England was committing herself to the "business of peace" with its consequence of making the problem of military organization a more difficult one. Small wonder that English arms were not to distinguish themselves in this period, or that a Wolsey had to accomplish by diplomacy what he could not by force of arms.

Some characteristics stand out, however, in the midst of the confusion. The transition from the feudal to the national army, evident in the previous period, while not complete, had progressed far enough to leave the old feudal remnant prone and gasping, needing only the death thrust of the Tudors to end its existence and that of the other surviving features of the régime with which it was associated. Nevertheless, and more important, the nationalistic conception of an army, like the nationalistic conception of everything else, was reaching fruition. That consciousness of country, that appreciation of community of interests, that spirit which prompts willingness to sacrifice—all things precedent to nationalism—that feeling early to appear but slow to develop in the English state, needed only the guiding hand of masterful sovereigns and the occasion in the form of a foreign foe off its shores to burst forth in full strength.

The condition of the profession of arms in England in the late fifteenth and early sixteenth centuries is well described by the keen-eyed Italian observers,¹ who wrote the truth, no doubt, though it appears inconsistent at times. "They have a great reputation in arms," wrote one, "they seek for good eating and comforts; they are of high character; their military strength lies chiefly in the infantry; they insist upon being paid monthly. When they are paid and have their comforts, they do battle daily with a courage, vigour, and valour that defy exaggeration. They do not fear death; they cannot hold; when hostilities are protracted they surrender. Were they able to endure a long run of privation . . . no militia could equal that of England. . . . They do not delight in military pursuits." Frequent comment is made upon the absence of a professional fighting class in England, a circumstance quite unusual and almost incomprehensible to the continental mind.² A common feature of the several comments is the unanimity with which the non-military character of the Englishman is referred to.

¹ In the fourteenth century the Italians had seen the White Company composed of mercenaries and soldiers of fortune, and led by Sir John Hawkwood. Hallam ranks Hawkwood as the first distinguished commander in Europe since the destruction of the Roman Empire. The Italians learned appreciation of English arms in this period. The Venetian ambassadors frequently commented upon the military in England to their council. In an extract from "A Relation of Rather a True Account of the Island of England," sent in 1498 by one Andrea Trevisano, Venetian ambassador, we read: "The English have a very high reputation in arms and from the great fear the French entertain for them we must believe it to be justly acquired. But I have it on good authority that when the war is raging the most furiously, they will seek for good eating and all their other comforts, without thinking of what harm might befall them" (Camden Society Pub., 1847, pp. 20, 21, 23). In October, 1513, Nicolo de Favri of Treviso, attached to the Venetian embassy in London, writing to Francisco Gradenigo, brother-in-law of the Venetian ambassador in England, said: "They had 30,000 efficient troops, not barefooted like those of Italy, men who did not go to rob but to gain honour and who marched at their own cost. They do not take wenches with them and they are not profane swearers." (Cal. State Papers, Venetian, II, 1509-19, No. 333.)

² Report by Sebastian Giustinian, Venetian ambassador to England, Sept. 10, 1519: "In England they do not make use of the men-at-arms at all, so they could not raise one hundred on the whole island. The real military force of the country consisted in its infantry which was supposed to amount to 150,000 men whose peculiar weapon was the long bow. . . . They insisted upon being paid monthly and did not choose to suffer any hardships, but when they had their comforts (*Commodita*) they could do battle daily with a courage, vigour, and valour that defied exaggeration" (Cal. State Pap., Venetian, II, 1509-19, No. 1287). Other comments of a like, or similar, nature appear elsewhere. Cf. *Ibid.*, IV, 1527, No. 694, where the comment that the English cannot hold out, *non si sanno trattenerne*, is made. Also *Ibid.*, V, 1534-54, No. 703, and No. 934; VI, pt. II, 1556-57, No. 884.

Though the first of the Tudors had few military ambitions, the Commission of Array appears early in the reign. In 1485 such an order was issued for the county of York in anticipation of a Scotch invasion.³ Similar fear led in the following year to an order for Suffolk, Norfolk, and Essex to furnish men. This commission included among other details special instructions for repairing and guarding the beacons.⁴

In 1488-89 the king made pretense of a desire to cross the channel for operations in France. On the basis of this he secured grants from Parliament and made appeal for military support through the promulgation of Commissions of Array.⁵ Some features of these military summonses are of interest. In 1498 he caused to be published in London a proclamation that he had determined to re-enforce the army in Brittany and asked that all persons "willing to serve" report to Sir Charles Somerset.⁶ This departs clearly from the mandatory tone of the usual summons and emphasizes the more voluntary aspect of military duty. A Commission of Array of the same period contains an accusation against Charles of France. He is charged with unjustly occupying the lands still claimed by the English and even threatening the destruction of England itself; on the basis of this an appeal is made for military support to thwart these bold steps.⁷ It would appear that such subject matter in the commissions is indicative of the new tendency in the conduct of the military establishment. Mandatory terms were not in keeping with the times, the Englishman must be made to feel an interest and nationalistic pride in the project proposed. In this the Tudors were adept, and nothing better illustrates the tendency than the changed tone of the Commission of Array.

Many other commissions follow of a like temper.⁸ The expressions, "for the defense of the country" and "at the King's

³ Patent, Sept. 25, 1485. 1 Hen. VII, p. 1, m. 17 *in dorso*. *Letters, Rich. III and Hen. VII*, II, 368 (Rolls Series).

⁴ *Ibid.*, p. 369.

⁵ *Ibid.*, p. 371. This also called for a form of "military inventory," numbers of archers, etc., in each county.

⁶ *Ibid.*, p. 371.

⁷ *Letters, Rich. III & Hen. VII*, II, 372 (Rolls Series).

⁸ *Ibid.* (in 1491). This contains an especial appeal to the subject's loyalty. Rymer, *Foedera*, XII, 482 (1492) (Original Ed.); *Letters Rich. III & Hen. VII*, II, 371 (Rolls Series) (July, Aug., 1490); p. 372 (1491).

wage" are emphasized, and a long explanation of the reasons for the appeal is made.⁹

A number of statutes of importance seeking to protect the interests of the soldier while serving are illustrative of the tendency to seek coöperation, not servile obedience. Henry VIII in 1491 sought to protect soldiers from their hirers and captains by forbidding practices such as numerous fines and withholding pay for minor infringements of regulations.¹⁰ This confirmed 18 Henry VI, but went much farther.¹¹

The lack of enthusiasm for military service which was prevalent at the time had another side perhaps not so desirable reflected in the statutes. This was the constantly increasing number of desertions. The military obligation seemed to rest lightly upon the Englishman; if the monthly stipend was not promptly forthcoming, if conditions were not favorable, he would more than likely pack up and set out for home. The statutes seek to punish desertion with more severity.¹²

One commission of the period shows an attempt to secure the loyalty of the north in the uncertain year of 1485 by combining with the order to array a decree that the oath of allegiance be taken at the same time.¹³

Attempts to bolster up the rather insecure military organization and to make up for some of the recent losses in the knightly class are reflected by 11 Henry VII, supplemented by 19 Henry VII.¹⁴ These seek to impose the obligation of

⁹ Rymer, *Foedera*, XII, 482, Aug. 2, 1492 (Original Ed.). The following are examples in connection with the Scotch wars: *Letters, Rich. III & Hen. VII*, I, Appendix C., 375, 376; II, 579, 580 (Rolls Series).

¹⁰ *Stat. of Realm*, II, 549-50, c. 1.

¹¹ *Ibid.*, II, 314, c. 18 and 19.

¹² *Stat. of Realm*, II, 549-50. Desertion had always been somewhat of a serious problem in the English military organization.

¹³ An order of array, Sept. 25, 1485, to Richard, Lord Fitzhugh, lieutenant for the North, and others to array all men from the Trent to the Tweed and take oaths of allegiance in Yorkshire, Northumberland, Cumberland, Westmoreland, and Nottingham. [*Materials for the Study of the Reign of Henry VII* (Rolls Series)].

¹⁴ 11 Hen. VII, c. 18, *Stat. of Realm*, II, 582. "Where as every subgette by the dutie of his Alleigeance is bounden to serve and assiste his Prince and Sovreign Lorde at all Seasons when nede shall requyre, and most especially suche persones as have by hym promocien or avauncement &c." (p. 582). 19 Henry VII, c.1, provided minutely for wages "from tyme of comyng frome his House towards the King, when they come to the King & frome the Kyng's home ageyne at the tyme of their deptyng after the rate of XXty myles for a Day & whyles they be wyth the Kyng's Grace to have also the King's Wayges" (p. 648).

service upon a new group: holders of offices, fees, or annuities under the crown, or of honours, or lands, under the king's letters patent. Their military obligation is fully recited; they are to receive wages from the time of leaving their homes until their return, are not to leave without permission, and are expected to serve either inside the kingdom or out.¹⁵

In his siege work incident to reducing the castles of some of the obstreperous nobles, Henry VII had developed a train of artillery, claimed by one authority on the period to have been the only one of its kind in the land.¹⁶

The periodic ambitions of Henry VIII abroad, strong and sincere at first but later lacking earnestness under the skillful hand of Wolsey, called for repeated appeals for military service. The troubles in securing response may have compelled that artful statesman to adopt his plan of securing with diplomacy that which he could not by show of force. Who knows but what the unmilitary character of the English state at this time may have been a determining influence in causing the Cardinal to trim the sails of his foreign program to suit these conditions at home? The early years of the reign saw the disastrous attempts to make war on France, featured by the abject failure of Dorset's expedition to Guienne in 1512 and partly redeemed by Lord Howard's success at Brest and Tournay the year following. Commissions of Array were issued to recruit troops for both of these expeditions and for the sea as well as the land forces.¹⁷

After peace had been established in 1514, cemented by the marriage of Henry's younger sister, Mary, to Louis of France, Henry's ambitions were more restricted. Soon the succession of Francis I and Charles to the thrones of France and Spain, respectively, was followed by the vacancy in the office of head of the empire. Henry and Wolsey made a futile bid for the position, but, of course, were disappointed.

Meantime the Scots under James IV had invaded England while Henry was absent, and under Catherine's able

¹⁵ Hen. VII, as above, c. 18, *Stat. of Realm*, II, 582.

¹⁶ Innes, *England Under the Tudors*, p. 48.

¹⁷ Patent Rolls, 4 Hen. VIII, pt. I, m. 10 d and 11 d, quoted by Col. J. Bonhote in *Historical Records of the West Kent Militia* (London, 1909), p. 21, and *passim*. There was no distinction between troops raised for sea or land service.

direction the terrible defeat at Flodden Field had been inflicted by the Earl of Surrey. For all of these military efforts the Commission of Array was used to secure troops. The size of the king's bodyguard had also been greatly increased.¹⁸ Writs for the better enforcement of the Statute of Winchester followed.¹⁹

During all the period outlined above, the attention of the sovereign had been given to the development of the army. Henry was hardly in office before a proclamation was issued commanding subjects to be prepared for military service by equipping themselves with suitable weapons, horse, and harness.²⁰ Other orders of a like kind followed.²¹ Also, as has been indicated, the order for gathering a retinue of spears, or men-at-arms, from those of noble blood for a personal bodyguard had been sent out.²² Dorset's expedition, supposedly to coöperate with Ferdinand against France, was aided by the Commission of Array.²³ The help of the sheriffs in compelling

¹⁸ Cal. State Pap., Nov. 20, 1509. *Let. & Pap. Hen. VIII, For. & Dom.*, I, 1509-14, No. 678.

¹⁹ Cal. State Pap., Hen. VIII, July 5, 1511. *Let. & Pap. Hen. VIII, For. & Dom.*, 1509-14, I, July 5, 1511.

²⁰ *Ibid.*, No. 679.

²¹ Lieutenants of the towers had been named (*Ibid.*, No. 679); gunners appointed "to be paid out of the customs" (*Ibid.*, No. 120); A "Keeper of the Arrows" in the Tower of London was designated (*Ibid.*, No. 138); and a Commission of Array to Thomas, Lord Darcy, and eight others for the County of Northumberland is noted (*Ibid.*, No. 187). Lord Darcy occupied a very important position in the kingdom at this time. He was warden, chief justice, and justice in eyre in forests, parks, chases and warrens beyond the Trent (*Ibid.*, No. 188); he was warden general of the East Marches and had charge of the castle of Berwick; he was overseer-in-general of the lands assigned by Parliament for the payment of the garrison at Berwick (*Ibid.*, No. 192). At the same time he held a few other minor offices (*Ibid.*, Nos. 190, 191, 193). The assigning of lands for the support of a military garrison (No. 192) is an interesting item. Musters had also been ordered for Calais (*Ibid.*, No. 521) and for men to serve at Calais. (*Ibid.*, No. 523).

²² *Ibid.*, No. 678.

²³ *Let. & Pap., Hen. VIII, For. & Dom.*, 1509-14, I, Nos. 1734, 1735, 1799. The chancellor of the County Palatine of Lancaster is directed at this time (No. 1799) to appoint commissioners under his seal for the raising of troops in that area. No. 5741 contains instructions to Lord Darcy, who is to lead one of the commands to Cadiz to coöperate with Ferdinand: "He shall beg the King to use him as his own subject and state that, as the manner of war and ordering the same is not like that used against the Moors, he begs the King of Aragon to appoint some expert man of war by whom he may at all times be ordered." This danger of ineffectual coöperation between the English and Spanish seems to have been feared from the first. Nos. 3229, 3332, 3336, 3380, 3393, 3394 all relate to orders of commissions and musters. The last named called upon the Cinque Ports to prepare for defense against invasion.

obedience to military summons was aimed at in a proclamation of the same time.²⁴

The sad results of the Dorset expedition reflect the weaknesses in the prevailing military system. No discipline prevailed among the English troops, mostly raw recruits drawn from hasty levies and impatient of service in foreign lands. Insubordination broke out.²⁵ The troops mutinied and prepared to return to England, causing the whole expedition to fail.²⁶ The unpopularity of coöperation with the Spanish and the lack of adequate equipment and supplies help to explain the collapse.²⁷ But more especially does the result reflect the transitory character of the period. Neither the old feudal bond that united the levies to the flag of their leader, nor the new tie of nationalism was sufficiently strong to hold the men, the former being too weak and the latter not yet developed. The change from the feudal companies to the disciplined national regiments was only partially complete. Later expeditions were to suffer like experiences, Lord Leonard Gray's in Ireland, Suffolk's in 1523, and minor ones elsewhere. Even the guiding hand of Wolsey could do little to remedy the situation in the military, and England found it expedient to withdraw from active military participation.

Commissions of Array continued, however, to be quite widely used.²⁸ The raising of troops for the resistance to the Scots, leading up to Flodden Field, was largely by means of the commissions.²⁹ The northern areas continued to be a problem in administration.³⁰ After the creation of the King's Lieutenant and King's Council in the North, the Commissions

²⁴ *Let. & Pap. Hen. VIII, For. & Dom.*, 1509-14, I, July 5, 1511.

²⁵ *Let. & Pap. Hen. VIII, For. & Dom.*, I, Nos. 3298, 3355, 3356, 3451.

²⁶ Polydore Vergil (*Hist.*, XXVII, p. 13, Ed. 1641) writes of the indignation of the king at the failure and of his effort to explain it by saying that the bad weather brought disaster (*Ibid.*, No. 3555).

²⁷ So states Fortescue, *History of the British Army*, I, 113.

²⁸ *Ibid.*, Nos. 3688, 3723, 3950, 4939, 4979, 5626 and *passim*. The records of the period are full of evidence of use of commissions of muster and array.

²⁹ *Ibid.*, No. 3358, 3359 (Thomas, Lord Darcy, to Henry VIII; No. 4434, by Catherine, the queen, to various persons.)

³⁰ The appointment of a king's lieutenant and high commissioner for the Northern Parts had been resorted to as early as the Yorkist period. Later the King's Council in the North was erected. For a full discussion of this institution see the treatment in Dr. Rachel R. Reid's *The King's Council in the North*. See also, Lapsley, "The Problem of the North," in *Am. Hist. Rev.*, V, 440-66.

of Array for that area were usually addressed to this body.³¹ Use was also made in the Tudor period of the Commission to secure oaths of loyalty in the northern districts.³² Henry VIII continued to send the Commissions of Array to the Council,³³ and, according to Dr. Reid, the Commission was the means used to place the Lieutenant of the North in office.³⁴

To strengthen further the weak military system, the Tudors made more use of, and possibly created, the office of Lord Lieutenant in the counties, though the commission of lieutenancy is very similar in form to the Commission of Array.³⁵ To these, together with the sheriff, the Commissions of Array were addressed. From this time on commissions to the lords lieutenants to muster troops, maintain the peace, and repress rebels were practically identical in form with the Commission of Array, as Miss Thomson says.³⁶

In 1521 and 1522 extensive preparations were made for putting the nation on a war basis to strike at France on the one hand and to withstand repeated Scotch invasions on the other.³⁷ In this work the Commission of Array was widely used.³⁸ Instances of its further use continue for the remainder of the period of foreign wars.³⁹

³¹ As that of May, 1484, by Rich. III, which commission was the basis of the authority of the lieutenants, according to Reid (*op. cit.*, p. 59). See Pat. Rolls 1476-85, pp. 397-401. Again, also by Hen. VII, Sept. 25, 1485, in *Materials for the Study of the Reign of Hen. VII*, I, 49 (Rolls Series).

³² See p. 44, *supra* and note 13.

³³ *Let. and Pap. Hen. VIII*, Vol. VI, No. 13.

³⁴ Reid, *op. cit.*, p. 116. Also p. 59.

³⁵ For a complete discussion of the lord lieutenant see the work of Gladys Scott Thomson, *The Lords Lieutenants in the Sixteenth Century* (1923). The institution of the office seems a part of the whole story of military development and disintegration incident to the history of the Commission of Array. The commissioner of Array seems to be the prototype of the Lieutenant, and certainly the old officer, the "Heretoches" (Heretochiis, Heretochs) deserves consideration as the earliest type of officer of this sort. See Coke's *Institutes on Magna Carta*, pp. 69, 174-75; *Leges Edvardi, Regis*, cap. "de Heretochiis" in Lamberd's *Archion*, mentioned in one of Prynne's Tracts (*Gay Tracts* (Harv.), Nos. 211-525). Also Lamb, *Saxon Laws*, fol. 136; *Myrror of Justice*, pp. 8, 11, 12. Latter mentioned in Tract, "Militia, Old and New," *Gay Tracts* (Harv.), Nos. 1642, 1087.

³⁶ Thomson, *op. cit.*, p. 24.

³⁷ *Let. & Pap. Hen. VIII, For. & Dom.*, Vol. III, pt. 2, 1521-23, Nos. 2012, 2013.

³⁸ *Ibid.*, 2075, 2085, 2438, 2439, 2875, 2895. See Index of this volume for many other instances of their use.

³⁹ *Let. & Pap. Hen. VIII, For. & Dom.*, 1521-23, Vol. III, pt. 2, Nos. 2685, 2742, 2743, 2930 and *passim*.

After the cessation of the period of military activity abroad, when Wolsey began to play the international game with money and diplomacy rather than with armed forces, commissions do not appear so often in the records. England was rapidly attaining a position of influence due to financial resources, and its support was sought for this reason. Under Wolsey's skillful direction England made all possible use of this situation.⁴⁰

In this period, however, Commissions of Array were issued when internal disorders threatened, or when dangers from without were imminent.⁴¹ For example, local risings in Dorset and Somerset in 1545 led to the use of Commissions.⁴² Divers other occasions explain the appearance of the order in the records.⁴³ At the time of the Pilgrimage of Grace, resort was made to the muster of array for military purposes.⁴⁴ The succession of Edward VI brought new situations.

The policy of both Somerset and Northumberland necessitated the securing of the kingdom, and the problems were chiefly internal. The office of lord lieutenant reached its highest development thus far, and the Commissions of Array were addressed to these officials, forming the basis of their authority in the disaffected areas.⁴⁵ The disorders of 1549 seemed

⁴⁰ The continent was filled with men willing to serve as mercenaries for any country, if gold was forthcoming—lancemen, men-at-arms, Swiss volunteers, Flemish and German artillerymen, freebooters, and captain adventurers (Innes, *England Under the Tudors*, p. 71). Loans of money in England were desired for this reason. "Only promise to pay," said an Italian banker to his English agent; his promise was "better than the bond of an emperor" (Quoted in *Let. & Pap. Hen. VIII, For. & Dom.*, Vol. III, pt. 1, 1509-23, Introd. vii).

⁴¹ In 1539, there were rumors of an invasion by a confederacy of Roman Catholic powers. Commissions of Array were used to prepare for the defense. (Cottonian MSS, Appendix XXVIII, p. 19, and *Old Miscel. Papers*, K., No. 1, State Paper Office, quoted by Col. J. Bonhote, in *Hist. Rec. W. Kent Militia*, p. 22). Armies to crush internal risings were also raised by letters under the Privy Seal to landed gentry ordering them and their followers to come to the aid of the crown. (Thomson, *Lords Lieuts. in the Sixteenth Century*, p. 16; *Let. & Pap. Hen. VIII, For. & Dom.*, Vol. XI, Nos. 562, 579, 580 (i-iii), 700).

⁴² Pat. Rolls, 37, Hen. VIII, p. 2, m. 16.

⁴³ *Let. & Pap. Hen. VIII, For. & Dom.*, Vol. XX, pt. 1, No. 1081 (3); Rymer, XV, 75; *Let. & Pap. Hen. VIII, For. & Dom.*, Vol. XI, pt. 1, No. 846, (2, 13).

⁴⁴ Dodds, M. H. and R., *The Pilgrimage of Grace* (Cambridge, 1915), contains a complete account of this movement and of the military means to check it. See especially Chaps. X and XI.

⁴⁵ See Thomson, *The Lords Lieuts. in the Sixteenth Century*, pp. 24 ff; Reid, *The King's Council in the North*; Strype, *Ecc. Mem.* Vol. II, p. 278. Strype places the origin of the office of lord lieutenant in 1549; Miss Thomson thinks that there was an officer very similar as early as 1536; it would appear

to necessitate the strengthening of the king's hold over the counties.

Several acts pertaining to the military establishment were passed in the reign of Edward. One created the office of lord lieutenant.⁴⁶ Another endeavored to restate, possibly in broader terms, the obligation of military service, indicating that the bounden duty of the subject was to serve, when called, at home or abroad.⁴⁷

The reign of Philip and Mary witnessed an upheaval in the military. The well-known 4 and 5 Philip and Mary, c. 2, repealed all former statutes concerning the finding of arms.⁴⁸ It provided an entirely new basis for service. The law attempted to establish a national military force to be paid for by the subjects according to the amount of property held. It defined in specific detail the various groups of holders with the amount of service each group was bound to render. Commissioners of Muster were to be named under the Great Seal to inspect, and justices of the peace were to assist.⁴⁹

Another section of this statute recognized the right of the sovereign to impress men for military service.⁵⁰ While the effects of this law were never very widely felt because of the short length of the reign and because under Elizabeth it became practically inoperative, it was quite revolutionary and created discontent at the time. The act was repealed in the reign of James I.⁵¹ The effect of this repeal was, no doubt, to revive all the previous acts in force before 4 and 5 Philip and Mary.⁵² Frequent use of the Commissions of Array and the

that both are in part wrong, as a similar officer existed at a much earlier date than either one indicates. (See p. 26, *supra* and note 23. See also pp. 21-24).

⁴⁶ 3 & 4 Edward VI, *Stat. of Realm*, Vol. IV, pt. 1, p. 107. This was the statute formally creating the office of lord lieutenant in each county though the practice of having a similar official runs much farther back into history. (See note 45, *supra*).

⁴⁷ 2 & 3 Edw. VI, c. 2. *Stat. of Realm*, Vol. IV, pt. 1, p. 107. This statute also sought to protect the rights of the enlisted man in regard to pay and to secure the return of government property entrusted to the soldier, a provision which seems to indicate that the necessity of returning equipment upon discharge did not appear to be strongly felt by the Englishman of this period.

⁴⁸ 4 & 5 Phil. & Mary, c. 2, *Stat. of Realm*, Vol. IV, pt. 1, pp. 316 ff.

⁴⁹ *Ibid.*, c. 3.

⁵⁰ *Ibid.*, Sec. 2.

⁵¹ 1 Jac. I, c. 25, *Stat. of Realm*, Vol. IV, pt. II, p. 1052.

⁵² This remained a mooted point down to the Long Parliament. In the quarrel over control of the military at that time, that body contended that all previous statutes in regard to the military were revived by the repeal of 4 and 5 Phil. & Mary. (See Chaps. VI and VII below.)

similar Commission of Lieutenancy was made by Mary.⁵³

The ominous conditions incident to the succession of Elizabeth called for an inventory of the military strength of the island kingdom. A "military Europe, far ahead of the island kingdom in exploits of arms, looked on frowningly."⁵⁴ Strong measures were necessary. Arms were purchased abroad, in Flanders chiefly; the shire forces were called and trainbands drilled.⁵⁵ Commissioners of Muster were early named for all the counties and ordered to report as to the resources of their respective districts.⁵⁶

Lords lieutenants were named for all the counties of England with a view to strengthening the hold of the sovereign over local military affairs.⁵⁷ The Queen refused to employ mercenaries even in what appeared to be a dangerous time, deciding to rest her fate with the country. The responses to the muster calls, while not complete or unanimous, were sufficient to justify her decision. After the musters were taken, the Commission of Lieutenancy was often withdrawn, as in the case of the Earl of Arundel in Sussex.⁵⁸ Thereafter, when danger appeared imminent, Commissioners of Muster would be hurried out to the country to command the forces to be in readiness.⁵⁹

The men, however, were poorly trained and equipped, since the sovereign would not expend funds to establish properly a national military force of value. For service in the Low Countries "prison doors were opened, gaols swept clean; robbers, highwaymen, the sweepings of the nation, went into the

⁵³ Thomson, *op. cit.*, pp. 35 ff., refers to many of these. The Commission of Lieutenancy certainly was based upon the old form of the Commission of Array. See Rymer, XV, 456-57 (Editio Secunda) for *De Arraiatione facienda*, an order to the chancellor in 1557 to issue Commissions of Array in the several counties. See also, *Ibid.*, p. 336, with the same heading and addressed to Lord Gray of Wilton instructing him to raise 350 footmen and 50 horsemen ("Demy Launcys") in Kent and London. Another (*Ibid.*, p. 486) read, *De Commissione ad Emendum et Providendum Arma et Munitiones*.

⁵⁴ Fortescue, *Hist. of Brit. Army*, I, 127 ff.

⁵⁵ *Ibid.*, p. 128.

⁵⁶ *State Pap., Dom., Eliz.*, 1547-80, Vol. II, Nos. 25, 26, 31, 32, 33, 36, 37, 38, 44; Vol. III, No. 1; Vol. IV, No. 4, and others.

⁵⁷ *State Pap., Dom., Eliz.*, 1547-80, Vol. II, Nos. 25, 26, 31, 32, 36, 37, 38, 44; Vol. III, No. 1; Vol. IV, Nos. 4, 29, and *passim*.

⁵⁸ *Ibid.*, Vol. VII (Dec., 1559), Nos. 9, 10.

⁵⁹ *Ibid.*, Vol. XII, Nos. 10, 11, 15, 22; Vol. L, No. 1; Vol. LI, Nos. 1, 2, 3, 4, 9, 14, 15, 16. This was at the time of the Catholic revolt in the North.

ranks.”⁶⁰ Even a crisis, such as the revolt of the Catholic lords in the North, did not bestir the Queen to decisive action.⁶¹

Elizabeth did not want an idle military force on her hands. In 1560, she addressed the lieutenants of the counties to the effect that “no soldiers be suffered to live out of employment, idly or suspiciously, nor to carry arms about with them.”⁶² A likely chance of developing a trained, disciplined fighting force! A wonderful opportunity to establish a national military force, just at a time when all influences were favorable, when nationalistic tendencies, the product of the Tudor régime thus far, were strongest and could have found greatest expression in such an insitution, such an opportunity was disregarded by the sovereign. And the value of such establishment, if it had been created, in the Stuart period convinces one with great force of the error made. As it was, the policy pursued left the army, in spite of apparent success at the time of the Armada, unorganized and inefficient; and the questions of control and administration were passed on to add further complexity to the troubled era of the Tudor successors.

In 1562, when some pretense of aid to the Low countries was made, commissions were issued for the muster of men.⁶³ Reprieves were granted, and the crew was turned over to the Earl of Warwick for service abroad.⁶⁴ Danger of a Roman Catholic restoration plot, the marriage of Mary to Darnley, the birth of a son, and probable support from Philip, all boded ill for the island kingdom. But a few orders for musters constituted her sole reaction to the ominous foreign situation.⁶⁵

In 1567 the sheriffs and lieutenants were ordered to cause the whole force of the shires to be mustered with all suitable array of armour and weapons.⁶⁶ In 1567 it was decided to train a company of harquebusiers, and orders for their recruiting “from the artificers of certain towns” were sent out.⁶⁷

The rising in 1569 necessitated the calling of the musters.⁶⁸

⁶⁰ Fortescue, *Hist. of Brit. Army*, Vol. I, p. 131.

⁶¹ *Ibid.*, p. 133.

⁶² *State Pap., Dom., Eliz.*, 1547-80, Vol. XIII, No. 24.

⁶³ *State Pap., Dom., Eliz.*, 1547-80, Vol. XXIV, Nos. 35, 36. These called for 400 soldiers from Sussex, 400 from Hampshire.

⁶⁴ *Ibid.*, Vol. XXXVI, Nos. 88, 89, 90; Vol. XXXVII, No. 17.

⁶⁵ *Ibid.*, Vol. XXXVII, No. 17.

⁶⁶ *Ibid.*, Vol. XLIII, Nos. 48, 49, 52. ⁶⁷ *Ibid.*, Vol. XLIV, Nos. 35, 60.

⁶⁸ *Ibid.*, Vol. XLIX, Nos. 71, 78, 84; Vol. LI, Nos. 3, 8, 9, and others. Vol. LXI (1569), is a volume of musters, military forces, commissions, instruc-

The Commission of Muster seemed to be the usual way of addressing the call for troops in this period. Generally the lords lieutenants, the sheriffs, and some others were included in the list of those to whom the order was sent.⁶⁹

In 1572 a volunteer force was raised, backed by popular subscription, and sent to fight for the Dutch under Captain Morgan. From this time on "England's military stream divides"; by far the more important branch consists of the steady stream of Englishmen who fought in the Low Countries until called home by the Civil Wars.⁷⁰ The absence of a trained establishment at home is well shown by the fact that of the other stream, the domestic force, little need be said. Little or no progress was made in that to the end of the century, and this was true in spite of the crisis successfully met in 1588. In the various crises England would not depart from "her traditional business of peace." From the volunteer force raised in 1572, not for her own use but for the service of a foreign prince, was to come the nucleus of the country's first real national fighting force. The sad little groups of raw recruits of the trainbands drilling awkwardly at Mile End, to the amusement of William Shakespeare and his fellow-spectators, were typical of the fighting force of the great state of England.⁷¹ But their more venturesome brothers, fighting in the armies of Prince Maurice of Nassau, were learning valuable and much needed lessons for the later advantage of their home military establishment.

The great effort of defense in 1588, as far as the land forces were concerned, was hardly the work of an organized military system. The country rose virtually without official direction, and the woeful lack of management showed how illy prepared and how sadly neglected the land forces of the state were. It was fortunate for England that her ships were strong and that the wind blew favorably on that August day!

Since about 1583 Elizabeth had again engaged in spasmodic attempts to organize the levies. Lieutenants were appointed

tions, correspondence, etc. for the County of Warwick. In the lists, the name of William Shakespeare appears as a trained soldier of Rowington.

⁶⁹ See various instances in musters cited above, note 68 especially.

⁷⁰ Fortescue, *Hist. of Brit. Army*, I, 134-35. Guizot, *General Monk*, pp. 4 ff., deals with the subjects "*L'Allemagne et le Pays-Bas*."

⁷¹ Shakespeare's *Henry IV* and *Henry V* portray the situation at this time.

and Commissions of Muster sent out with frequency.⁷² Again the form of the writ was the Commission of Muster.⁷³ This practice was followed in the period of defense at the time of the Armada. The military work was carried on by means of the lords lieutenants and their deputies.⁷⁴ For the French expedition of 1591 the same methods were used.⁷⁵ One of the last Commissions of Lieutenancy appears in 1598, being issued in that year to the Earl of Nottingham.⁷⁶

Thus ended the great period of Elizabeth, an era which resounds to the credit of the sovereign, perhaps deservedly in some respects, but certainly not as regards things military. Neglect, passiveness, lack of appreciation, niggardly policies, overlooking of opportunities which might have saved bloodshed in later periods, all these seemed to be chargeable to her and her government. The era which, in spite of her, saw the fruition of much of the Tudor policy, beneficial to the state in divers ways, witnessed the failure to achieve a national fighting organization to save England's shame and blood in later years. Unhappily for England, the work, unsolved and complex, was bequeathed to the Stuart régime.⁷⁷

⁷² Thomson, *Lords Lieutenants in the Sixteenth Century*, pp. 94 ff. Also *State Pap., Dom., Eliz.*, 1581-90, index under musters and Lords Lieuts.

⁷³ *Ibid.* The work contains the reports of the Commissioners of Musters in the various counties.

⁷⁴ *Ibid.*, pp. 94 ff.

⁷⁵ Miss Thomson treats of the French expedition of 1591 at length.

⁷⁶ Rymer, *op. cit.*, XVI, 382-83.

⁷⁷ Fortescue says that both Mary and Elizabeth had the opportunity of creating a stable, well-settled military establishment; both failed, Mary because she feared the opprobrium that might have resulted, and Elizabeth, because she hated war, primarily on account of the expense involved (*Hist. of the Brit. Army*, I, 125-30).

CHAPTER V

THE STUART PERIOD—I

1603-1642

IN THE face of the foreign opposition in 1588, quite the ideal situation in which to cement the loyalty of the state and lead it skillfully to its best form of expression in a national fighting force, Elizabeth had failed miserably. Her successors were to suffer. The disgrace of English arms in the period was occasioned, it is true, by ill-advised plans and inefficient leadership, but also by the lack of a trained military establishment and conflicting theories in the minds of the nation, leaders as well as populace, as to the correct interpretation of the military obligation. The influences are readily discernible in the history of this troubled time, and as subjects saw James and Charles dragging England through the mud in the successive and abject failures of repeated expeditions to France and Spain, they changed from a feeling of pride and confidence in royal sovereignty to a state of mind fertile for the preachings of John Pym and his associates. Two of the four chief provisions of the Petition of Right related to military affairs, namely, those on martial law and billeting, while the grievance against another practice, impressment and the work of the press gangs, bulked as large in people's minds as any other one thing, but was, curiously, not included in the document. And when the break actually occurred between the sovereign and Parliament, no part of the issue was so vital, or struck so clearly at the heart of the whole controversy, as that which concerned the Commission of Array and the control of the military.

On the eve of the period which was to bring the problem of military control to a crisis—a crisis out of which and through which a national standing army was to be produced—it may be worth while to summarize the complex elements in the situation, the various theories held by people about the military obligation as well as the units under arms. The disorders of the

Stuart period were incident to a conflict in principles, in ideas, in religion, and in politics; and among these the incompatible points of view over the correct status of the fighting force in the state appeared very large. If it had been possible to ascertain and state absolutely and finally with whom control of the military rested in the spring of 1642, whether with Parliament or sovereign, there would without a doubt have been no civil war.

In 1603, England's fighting establishment, if there was enough to be so designated, consisted of the following ill-defined and poorly organized groups:

1. A Volunteer Standing Army (The Militia)
2. The Artillery Company of London
3. The Trainbands
4. The Yeomen of the Guard
5. The Garrisons at Calais, Berwick, and Dover

In regard to these there is little to be said. The first group was made up of the shire levies, raised by the patriotic appeals of the Tudor Commissions of Array, supplemented by the efforts of the press gangs when patriotism lagged and needed prodding. No regularity of recruiting or organization prevailed among these, and no understanding existed of their position in the state. Under the Stuarts the volunteer influence was to be lost, crushed under heel, and the work of the press gangs was accelerated to fill the quotas. The results were even worse.

The Artillery Company of London had been created by Henry VII to aid him in crushing out the rebellious spirit of some of the nobles who persisted in disputing Richmond's rights. Small in size, it was efficient and may have been the only train of artillery in the land.¹

The trainbands were the old local militia companies, the Home Guards. Of ancient origin, they had survived all through the Anglo-Saxon period in the cities and towns.² They were composed of men engaged in other occupations, who would assemble on the village green, or on the commons outside, and go through crude military maneuvers, armed with homely weapons, under the direction of leaders hardly more trained

¹ See p. 45 above. So stated by Innes.

² "A Train Band Captain eke was he, of famous London Town" (Chaucer, *Canterbury Tales*.) The prevalence of trainbands was not very great, being confined to the more important towns, no doubt.

than themselves. They are the only continuous expression traceable of a slight militaristic tendency in the English state, and, no doubt, they were so non-military as to satisfy everyone. Also they were devoted to a local, not a national, political unit and were more a law-and-order body than a real fighting force.

The Yeomen of the Guard were the men of a personal organization formed by the first of the Tudors to act as an escort and protection for himself. The necessity of forming these purely personal bodies reflects the failure of the state to function in so important a matter.

The permanent garrisons stationed at Calais, Berwick, and Dover were for the most part men of former shire quotas, or men serving under terms of indenture contracts, probably more of the latter class at this time, as indenture agreements for garrison service were common. It was difficult to get men for prolonged service of this sort, except by this form of enlistment.

Nothing which approaches an orderly military establishment is discernible in any or all of these groups, nothing out of which could come a national army except by a careful development or a complete transition. This had never been undertaken, and so these units stood, unorganized, disorderly, and mutinous through lack of management.

In a period when principles were to play such a part in determining the course of events, it is well to investigate the theory, or theories, back of the idea of the military obligation in England at this time. A consideration of this kind shows great variety in the nature of the duty as reflected in the different ways resorted to in order to increase the army.

Fortescue suggests the following table:

A. Military forces raised by statutes relating to the defense of the realm

B. Military forces raised—

I. By tenure of land

a. Holding by Knight's Service, Grant, Grand Sergeantry, Cornage, Castle Guard, Petty Sergeantry, etc.

b. For supplying wants of the army—Villeins, Socage, Ancient Demesne, or Burgage

II. By Prerogative Revenues

For extraordinary occasions of defense—Treasure Trove, Royal Mines, etc.

III. By supplies of money

Both ordinary and extraordinary, coming from Parliament when the ordinary supplies failed

C. The Militia

Based upon the common law principle of the duty of the subject to render military service (Incorporated in some of the statutes under *A*, *supra*)

D. Special forms

Body Guards, Personal Guards of Sovereigns, Yeomen of the Guard of Henry VII, Corps of Gentlemen-at-Arms of Henry VIII, kept up by Charles II, James II, and later sovereigns³

Many of these methods overlap, naturally, as those forces raised under *A* and under *B*, II, *B*, III, and *C*. But the idea behind the obligation varies somewhat in each case.

A study of these various methods seems to put the duty of rendering military service upon the following grounds:

1. Obligation through the form of land tenure
2. Obligation of every subject to serve the state
 - a.* Through duty or loyalty (the Militia)
 - b.* Through being employed by statute provision
3. Obligation through personal friendship (bodyguards, etc.)

Two of these, the first and third, may be omitted, the one because it was declining very rapidly in England at this time, the other because its small size makes it negligible. The obligation, then, must, for the most part, rest upon the militia idea of service, or upon the contractual relation established by statute. Details of each, however, remained uncertain as to its being an obligation to the country, the sovereign, or the Parliament. Was it an obligation one could refuse to accept, or must the essentials of a legal contract be observed in the hiring just as

³ *History of the British Army*, Vol. I.

in any other contract? In this latter connection it is interesting to note how the lawyers and the press gangs tried to comply with the English regard for legal contract. According to them, when the gang swept down upon a man, they pressed the king's shilling in his hand; his acceptance implied consent to the bargain and the deal was closed; and they could then compel him to live up to the terms. The fact that it was under duress seems to have been overlooked. Another question of detail arose: whether the service was to be rendered to the king personally or to the country through some duly authorized agent or institution. The fact that these problems were unsolved was to complicate seriously the situation in the Stuart period.

To some extent the statutes passed at various times also reflect the militia idea as contrasted with the other forms of military service.⁴ This indicates that there was a recognition of the distinction between the forms of expressing, or carrying out, the military obligation.

The reign of James did not call for very extensive military operations, and those conducted show the condition of the army to have been at about its lowest point.

James and Cecil concluded the treaty with Spain in 1604, and twenty years of peace followed. During this time military ardor declined, and the organization, if any, broke up. With the renewal of hostilities in the period of Buckingham's control, six different expeditions went across the channel and failed woefully. The first expedition, twelve thousand foot, raised by the press gangs, torn from civil employment, turned over to the command of the foreign leader, Mansfield, undisciplined, poorly equipped, and deserted, was cast adrift in Holland, while Buckingham and his royal master pushed the French marriage and lost the support of Parliament. England's pitiful little army

⁴ List of statutes relating to the militia:

13 Edw. I, c.6 (Stat. of Winchester)

34 Edw. I

1 Edw. III, stat. 2, c.5

List of statutes relating to army, other than militia:

1 Edw. III, stat. 2, c.5, 7

18 Edw. III, stat. 2, c.7

4 Hen. IV, c.13

18 Hen. VI, c.18

7 Hen. VII, c.2

11 Hen. VII, c.18, 19

25 Edw. III

5 Hen. IV, c.3

4 Phil. & Mary, c.2

3 Hen. VIII, c.4, 14

15 Henry VIII, c.14

2 & 3 Edw. VI, c.2

4 & 5 Phil. & Mary, c.3

35 Eliz., c.4

39 Eliz., c.17

16 Car. I, c.28

then dragged itself home, a sad commentary upon the condition of the government. Then followed the Cadiz expedition in 1625; that to seize the Isle of Rhe, after which forty English flags were hung up in Notre Dame de Paris; and the one sent against Rochelle in 1628, all failures and all typical of the period of governmental weakness and military inefficiency.

Charles's forced loans, the institution of martial law, the scheme to keep the pressed recruits together, billeting—all helped to bring about the Petition of Right and the declaration against the Stuarts' becoming military despots.

Without a school of military tradition or the nucleus of a standing army, England paid dearly for its reputation as the most civilian state in Europe.⁵ The press gangs worked overtime to fill the ranks, but only mobs of rogues and weaklings were caught in the net.

Meantime, the contest between Charles and his Parliaments waxed warmer, and feeling in the country more bitter. The foreign situation protected England and made its weakness unimportant for the moment. The empire of Charles V had passed, that of Louis XIV had not yet arisen, Gustavus Adolphus was successful in Germany, and England was safe even in her weakness.

But a new menace appeared, turning attention to the need of strengthening the navy. France and Holland had risen rapidly and now disputed English rights on the seas; pirates preyed upon English commerce, and James and Charles did nothing to remedy the situation.⁶ Finally, the institution of ship money was used to increase the number of royal vessels. In Hampden's case the right of the king to absolute control in matters of defense was upheld and the principle declared that acts of Parliament to take away this power were void. The arguments of the ship money case were to be reviewed in a period a little later, when the whole question of control of the military was to be decided by force of arms.⁷

The lack of military system caused the downfall of the

⁵ Trevelyan, *England under the Stuarts*, p. 147.

⁶ Between 1609 and 1616 Turkish pirates from Algiers took 466 English merchant ships; in 1625 they carried off a thousand English seamen as slaves. Piratical raids on the coast settlements of Devon and Cornwall showed the lack of naval protection. (Quoted by Trevelyan, *op. cit.*, pp. 182-83.)

⁷ See Chap. VIII, below.

Stuarts. And the occasion was the attempt to reduce Scotland by force of arms with trainband militia and pressed recruits, aided by more or less unwilling nobles. Against these was pitted a nation in arms led by feudal chiefs, the backbone of which was veterans of the wars of Sweden and Holland, disciplined and zealous. The disastrous Bishops' Wars followed. Commissions of Array were attempted in the various counties, but the results were very unsatisfactory.⁸ It has been stated that Charles could raise only about one-third of the 30,000 men counted upon.⁹

Meantime, in September, 1639, Sir Thomas Wentworth, the "man from Ireland," had been called home to "tame the Parliament" and the country. Flushed with success in crushing the opposition of the Catholic Irish by means at once cruel and illegal but possible in that distracted country, Wentworth attempted the same policy in England under far different circumstances, bringing disaster upon himself and his royal master.

From now on the whole thread of the story may be woven about military developments. The king's new adviser was bent on establishing the machinery of government by coercion, as well as crushing out the rebellion in Ireland and Scotland. Military forces were necessary for such a program, but they were not forthcoming in the English state. Wentworth had been able to dominate the Dublin Parliament and obtain his desired subsidies, why could he not accomplish the same thing in England? Acting on a false analogy he tried it with the Short Parliament, called in April, 1640, at his instigation.¹⁰ Failing in this, he next undertook a policy of coercion and the establishment of absolutism by force. An army must be forthcoming by fair or foul means. Terror reigned from May to October, while the press gangs went forth to satisfy the royal demands for men.¹¹

⁸ Rushworth's *Collections*, II, p. 1201: Commissions of Array for the northern counties, Strafford in command. Also see Gardiner, *Hist. of Eng.*, 1603-42, IX, 168 ff., 191.

⁹ Cross, *Shorter Hist. of Eng. and Gr. Brit.*, p. 470.

¹⁰ The Short Parliament sat from April 13 to May 5. In this body Pym declared that "the powers of Parliament are to the body politic as the rational faculty of the soul to man." A petition was about to be signed against the Scotch war when the king dismissed them.

¹¹ The Commissions of Array were sent out as usual, but were followed by the press gangs when proper response was not forthcoming to the summons, as was usually the case.

The militia and trainbands used in the First Bishops' War had proved weak; for the next attempt the counties of the south were to be worked. Here the Puritan influence was strongest and the resentment against forced enlistment most bitter. Great trouble was experienced in getting the men and in disciplining and holding them after they had been secured.¹² Whole companies deserted, and the military policy of Strafford collapsed. This collapse was to bring disaster to the Stuarts, because the failure was to necessitate the calling of the Long Parliament in October. Thus is emphasized the influence of the military events in making necessary the resort to Parliament, the condition precedent to an ultimate working out of the proper solution of the problems in hand. Had Strafford's policy succeeded at this time, or had the Stuarts at any earlier time developed a military establishment of disciplined men, devoted to sovereign and country, Parliament would have been helpless in the pending situation. The breakdown of the king's military system made possible the parliamentary resistance and was the first step in the direction of assumption of military control by that body. Had the Commissions of Array accomplished the intended results, no Militia Ordinances of a later date would have been possible. But, encouraged by the inability of the sovereign to organize the country, a failure resulting as much from general antipathy to any form of military service as to hostility to the Stuart cause, Parliament intervened and tried the same thing. In a way it also failed, though not to as great a degree, perhaps, and as a consequence the war was fought between two minorities.

In spite of the failure of the Commissions of Array and the coercion policy of Strafford, the nucleus of a royal army existed in Yorkshire, and it was against this that the Parliament early directed its attention. The royal force was considered a menace, as was also the king's so-called "Irish army." In the early days of February, 1640, two plans were proposed to disband the

¹² Treaty of Ripon (Camden Society, 1869), pp. xx-xxiii, quoted by Trevelyan, *Eng. Under the Stuarts*, p. 192 and note 1. Gardiner, *Hist. of Eng.*, 1603-42, IX, 157 ff., treats of the trouble in getting men and holding them. There was no enthusiasm for the cause, the men were raw recruits unused to discipline. Great distrust of the officers existed, the men accusing them of being Papists. The levies were especially resisted in the City of London, in Kent, Essex, Surrey, Herts, Buckinghamshire, and Bedfordshire.

Irish army.¹³ Later, a committee on martial law was named to consider the application of the military code.¹⁴ The cessation of the war with Scotland was continually asked for.¹⁵ A resolution in November, 1640, by the Long Parliament called for the raising of money to pay off and disband the king's forces in the north.¹⁶

From this time on the continued interference of the Commons in the military affairs of the country is an interesting development and one that is prophetic of the future. After all, the later Militia Ordinances are but the natural consequences of the growing assumption of military control by Parliament. Whether this was legal is not to be considered here. The naming of a commission on martial law has been referred to.¹⁷ In November, 1640, a committee of the Commons was appointed to consider the state of the king's army, to discover what commanders or inferior officers were Papists, and to inquire into the condition of the northern counties.¹⁸ As members of this committee we find the names of Sir John Hotham and Sir Christopher Wray.¹⁹ It reported in June, 1641.²⁰ In December, 1640, the Commons instructed the committee to include the garrison towns.²¹ In the same month, a subcommittee, apparently, was asked to investigate the misdemeanors of the lords lieutenants and deputy lieutenants in certain areas and the illegal collecting of coat-and-conduct money and to prepare a bill regulating the practices of those officials.²² Here is evidence of the asserted right of the Commons to regulate the military establishment; for if the chief military agents of the crown, the lords lieutenants, could be supervised and instructed, prerogative of the crown in these respects would be greatly curtailed. In April, 1641, Commons went farther and passed a resolution to the effect that neither the king's army nor any

¹³ Commons Journals, II, 85, 91.

¹⁴ *Ibid.* p. 93.

¹⁵ *Ibid.*, p. 100.

¹⁶ *Ibid.* pp. 11, 40, 57. Fifty thousand pounds was voted for military purposes (Nov., 1640), thirty thousand of which was for the king's army and the rest for garrison relief.

¹⁷ Of course, the subject of martial law had been up in the Commons before, but only for the most part by way of protest. Even the action in the Petition of Right was an exception.

¹⁸ Commons Journals, II, 34.

¹⁹ *Ibid.*

²⁰ *Ibid.*, pp. 177-78; 226.

²¹ *Ibid.*, p. 50.

²² *Ibid.*, pp. 50, 81. The latter is a reference to the committee in February, 1641.

of the trainbands of Yorkshire should march or advance without special order of the king with the advice and consent of both houses of Parliament, except in case of a Scotch or other invasion.²³ Nor was consideration of the navy neglected at this time; it was included in the attempted exercise of control of defense by the popular body.²⁴ In April, 1640, it sought to disband the Irish army, disarm the Papists, and with the Lords treat with the Scots.²⁵ This was surely an extreme step to take as early as 1640 and 1641. In the light of these actions the later Militia Ordinances do not appear so surprising.

The winter of 1640-41 witnessed the "Root and Branch Petition," the arrest and trial of Strafford, his execution following in May, as the aftermath of the first "Army Plot." Queen Henrietta Maria had been striving for some time to secure aid from any source possible for the Stuart cause in England. She had by herself carried on negotiations with the House of Orange, the Pope, and Richelieu, and, as one writer aptly says, in her despair she "would have welcomed an alliance with the Grand Turk himself."²⁶ Hers was probably the idea behind the Army Plot, which sent Strafford to the block. She seemed to be most influential in shaping Charles's policy against compromise with the Parliament, either then or later.²⁷

In April, 1641, the Commons again asked for the disbanding of the army.²⁸ In the summer of 1641, the King had gone north, giving further cause for suspicion of the possible use of the military to intimidate the Parliament. Autumn saw the increased fury of the Irish rebellion, with wild stories of massacres of the Protestants and rumors that a great Catholic army was to sweep down upon England. London seethed with stories of plots and plans. The Grand Remonstrance was framed in November and December, 1641, and served to solidify the parliamentary opposition and appeal to the nation. In the remonstrance Pym proposed that the king's ministers

²³ C. J., II, 116. This resolution thus claimed control of the actions of both the king's army and the trainbands, an extreme stand.

²⁴ *Ibid.*, p. 116.

²⁵ *Ibid.*, p. 117.

²⁶ Trevelyan, *England Under the Stuarts*, p. 210.

²⁷ Ranke relates: "Er verhieß ihr dagegen, von Entschliessungen die sie mit einander fassten, nicht abzuweichen ohne ihr Vorwissen, vornehmlich dem Parlament keine weiteren Concessionen zu machen." Ranke, *Englische Geschichte, vornehmlich im Siebzehnten Jahrhundert* (Leipzig, 1870), IX, p. 126.

²⁸ C. J., II, 259.

must be such "as the Parliament may have cause to confide in."²⁹ This could readily be interpreted to include those in control of the military establishment, inasmuch as parliamentary supervision of commanders had been aimed at sometime before. The Irish rebellion, with the tales of butchery and the disquieted state of London and of England, showed the need of an army, but the idea of placing such an instrument in the hands of the king held Parliament back. However, repeated assertions and threats were made in the Commons in regard to the military establishment.³⁰ That house early recognized that control of the military was the key to the whole situation, as it proved to be.

When Charles returned to London from Scotland, whence he had gone ostensibly to conduct the Scottish negotiations, but in reality to consult about bringing the army to the vicinity of London,³¹ he was greeted with great enthusiasm in a carefully planned reception organized by the new royalist Lord Mayor, Richard Gurney, who was knighted for his exertions on this occasion.³² Pleased by this demonstration, Charles ordered that the guard under command of Essex be removed from about Parliament.³³ When the Commons and Lords protested against this action, they were informed that the King would protect them.³⁴

The military question continued to be uppermost. Defense was needed, but by whom was it to be controlled? Late in

²⁹ Secs. 197, 198 (Gardiner, *Const. Docs.*, 1625-60). Other articles relating to the military were:

Art. 6. Against Billeting soldiers.

Art. 22. Against exactions of coat-and-conduct money and other exactions of a similar nature.

Art. 23. Against depriving the trainbands of their arms.

Art. 74. Relating to impressment of men. See Rushworth, *Collections*, IV, 436-51, for the document in full.

³⁰ C. J., II 259, 260. This was a resolution to investigate the question of raising forces for Ireland and for putting the kingdom in a state of defense.

³¹ The Parliament continued to regard the presence of the army in the north as a menace. A letter from the speaker of the Commons to the sheriffs of several counties urged haste in collecting the poll money with which to pay off the army before disbanding it. The army was accused of being burdensome and dangerous to the kingdom: *Diurnal Occurrences of Both Houses*. (London, 1641) in *Gay Tracts* (Harv.) 1641, No. 296.

³² Gardiner, *History of Eng.*, 1603-42, X, 82, 83, 84, 85.

³³ Rushworth, *Collections*, IV, 434, 435.

³⁴ Lords' Journals, IV, 452, 453, 455.

November, the Commons passed a motion to put the kingdom in a posture of defense.³⁵ Late news from Ireland further excited the House, and petitions of remonstrance passed back and forth. The Commons threatened to act alone in the matter of defense, when the Lords hesitated.³⁶ On December 6, the Impressment Bill, authorizing pressing soldiers for service in Ireland, passed by the House, was being debated in the Lords. One of the clauses distinctly denied the right of the king to compel service beyond the borders of the home county, except to meet a sudden emergency. The Lords contended that this clause took away the prerogative of the crown possessed for three hundred years, though it was copied, according to Hallam, from an unrepealed statute of Edward III.³⁷ The Lords returned the bill, and the Militia Bill of December 7 was the Commons' answer.

The Militia Bill went the length of asserting parliamentary control of the military, of stating that if the king could levy troops at will, then the command of the trainbands and militia must be taken out of his hands; they held that the Parliament should name a lord general of the armies. The bill, however, failed in the Lords.³⁸

The election of December 21 gave the Puritans control of the London Common Council and made Charles's position in London uncomfortable. Riots and disorders continued, and on December 23, Colonel Lunsford, a royalist, was made Lieutenant of the Tower.³⁹ This brought protests from the citizens as was to be expected.⁴⁰

It was the king himself who was to furnish occasion for the final, definite assumption of control of the military by the Commons. On January 3, 1642, the Attorney General rose in the House of Lords to impeach for high treason five members of the Commons: Pym, Hampden, Hazelrig, Holles, and Strode.⁴¹ Even the Lords were amazed and horrified. The

³⁵ D'Ewes, *Dairy*, Harl. Misc., clxii, 191 b.; Gardiner, *Hist. of Eng.*, X, 86. Also C. J., II, 365.

³⁶ L. J., IV, 330; Gardiner, *op. cit.*, X, 94. The Commons styled themselves, "the representative body of the whole kingdom" in this matter.

³⁷ Hallam, *Const. Hist.*, Chap. IX; L. J., IV, 330 ff.

³⁸ Gardiner, *op. cit.*, X, 96.

³⁹ Rushworth, *Collections*, IV, 459. ⁴⁰ *Ibid.*, pp. 459, 460, 461.

⁴¹ *Ibid.*, pp. 473, 477; L. J., IV, 501; C. J., II, 372, 383, the latter a protest by the Commons "against the act."

action was unconstitutional and without precedent; and when, on the momentous day following, the attempt was made to enter the chamber and arrest the members in question, the die was cast and the decision to resort to force seemed imminent. An impeachment brought by the king as accuser in the Lords was unconstitutional, while the attempted arrest was a violation of the sacred privilege of the Commons and an implied threat which they could not disregard.⁴²

Great excitement followed. Nothing better confirmed suspicions that the King was bent on resort to force than this. Each side now sought control of the means of defense. Exchange of notes between the Commons and the King followed: protest, petition, and implied threat on the one hand; explanation, justification, and argument on the other. Each side attempted to justify its stand in pamphlets and published resolutions, which were intended for public consumption. The battle of the tracts was on.⁴³

On January 12, the King consented to place the guard about Parliament again.⁴⁴ At the same time, that body named Sir John Hotham governor of Hull.⁴⁵ About the middle of the month (January 20) the Lords and Commons petitioned the King to raise the army for purposes of protection, reciting the disturbed conditions prevalent.⁴⁶ The reply avoided the issue. On the 26th and 28th the Commons asked that the King put the Tower of London and other principal forts and the militia under the control of such persons as the Parliament might recommend.⁴⁷ The Lords, however, maintaining a somewhat neutral position, refused to join in this petition.

The situation had now become acute, and no one perceived it sooner than the shrewd Henrietta Maria. She had counseled Charles to seize a place in the vicinity of London from which

⁴² Stephen, *Hist. of Criminal Law of Eng.* (1883), I, 160. The articles are cited in *Eng. Hist. Tracts* (U. of M.), Vol. VIII.

⁴³ *Eng. Hist. Tracts* (U. of M.), Vol. VIII (Jan.-Feb., 1642) contains almost a complete file of these letters passing back and forth between sovereign and the Parliament. Also see chapter on legality of Commissions of Array.

⁴⁴ Rushworth, *Collections*, IV, 495.

⁴⁵ *Ibid.*, p. 496; Hansard, *Parl. Debates*, II, 1129-30. Later—in April—he was ordered to bring the magazine, arms, and ammunition to London for safe keeping, but this had become impossible. *Ibid.*, 1164, 1194, debate on the subject.

⁴⁶ *Eng. Hist. Tracts* (U. of M.), Vol. VIII.

⁴⁷ *Ibid.*, p. 11.

to operate⁴⁸ and had recognized the need of securing control of Hull, a strategic point.⁴⁹

In the course of the written debates carried on by Charles and the Commons, the King's answers contained denial of the right of the Commons to interfere in the matter of military control: "for the militia of the Kingdoms, which, by the Law, is subject to no command but of his Majestie, and of authoritie lawfully derived from him."⁵⁰ The whole matter turned on the question as to where supreme control of the organization of defense rested, and the resolutions and answers contained the arguments on both sides.⁵¹ The importance of the question was recognized, and well it might be; on its solution was to rest the fate of absolutism. In answer to the request that the forts be placed under the control of men nominated by the Commons, the King said in refusal: "but the nomination of any persons to these places being so principal and inseparable a flower of his crown, vested in him and derived unto him from his ancestors by the fundamental laws of the kingdom, he will reserve it to himself."⁵² But he did ask for suggestions and possibly left a loophole for further treating.⁵³

The Commons, however, considered the answer a refusal and between January 28 and February 2 passed an ordinance for the ordering of the militia, "because of the most desperate

⁴⁸ "So erzählt sieselbst bald darauf an Crécy (a French agent): '*s'étoient resolu de se retirer de Londres en une de leurs maisons pour de la s'emparer d'une place forte, qui n'est pas beaucoup éloignée*'": (Quoted by Ranke, *Englische Geschichte vornehmlich im Siebzehnten Jahrhundert*, IX, 125).

⁴⁹ *Ibid.* Says Ranke: "Namentlich nach Hull wo sich ein grosses Magazin von Waffen . . . waren die Blicke der Königin gerichtet," etc. (*Ibid.*, IX, 125 ff., and 126, note).

⁵⁰ *Eng. Hist. Tracts* (U. of M.), VIII, 13. Other tracts in this same volume contain the same argument put in various ways at different times. The basic contention was always about the same.

⁵¹ See Chap. VIII, below, in which the legality of the Commission of Array is discussed. This portion goes more into detail concerning the rival contentions of both sides than is attempted here.

⁵² Rushworth, *Collections*, IV, 517.

⁵³ Ranke, *op. cit.*, IX, 127-28: "Als ihm gegen Ende Januar die Anmuthung geschah, die Festungen so wie die Miliz des Reiches nur solchen Personen anzuvertrauen die ihm von beiden Häusern des Parlaments würden empfohlen werden, betonte er es zwar in seiner Antwort dass die Ernennung der militärischen Befehlshaber eines der Klemmodien der Krone sei, dessen sie nicht entbehren könne." Ranke also suggests that there might have been further treatment in regard to the question, as the king asked for suggested names, amount of power desired for them, tenure of office, etc. "und die in dem Lande die Hoffnung lebendig anregte dass man doch noch zu einem gütlichen Abkommen gelangen würde."

and dangerous designs upon the House of Commons, the results of bloodie counsels of Papists and other ill-affected persons."⁵⁴ The Militia Ordinance provided for the issuance of orders for the raising of troops in blank to be filled in with the names of persons to whom they were to be addressed.

The king's reply still persisted in denial of the right of the Commons so to act. He wrote: "His Majesty, with best care, hath perused and considered that which was sent him. . . . for the ordering of the militia, presented unto him to be made an ordinance of Parliament by the giving of his Royal Assent." This he refused, of course, to do, still claiming sole control of the military.⁵⁵ Debate in the House brought out various views as to its power to act alone. Different theories were expounded. Mr. Whitelocks debated that "this power of the militia is neither in the King alone nor in Parliament, and if the law hath placed it anywhere, it is both in the King and in the Parliament, when they joyn together. It is wise of our laws not to settle this power anywhere, but rather to leave it *in Dubio*, or *in Nubibus*, that the people might be kept in ignorance thereof, as a thing not fit to be known, nor to be pried into; it is the great *Arcanum Imperii*, the less it is meddled with, the better it will be."⁵⁶ This was one of the most novel theories advanced.

Again, on March 2, both Houses resolved to put the kingdom in a state of defense.⁵⁷ On March 5, parliamentary ordinances concerning the raising of the militia were passed.⁵⁸ The die had been cast; the King had now left London, and Parliament daily took steps to exercise exclusive control over the military establishment. Petitions flowed into Parliament urging peace, counseling caution; resolution followed resolution; and addresses were sent to the King justifying the parliamentary action and praying for concessions. The King from York denied the parliamentary claims, especially with regard to the ordering of the militia.⁵⁹ Then by proclamation he forbade all his subjects

⁵⁴ Rushworth, *Collections*, IV, 519. Hansard, *Parl. Debates*, II, 1083 ff.

⁵⁵ *Ibid.*, pp. 521, 522.

⁵⁶ *Ibid.*, pp. 524-26. A more detailed treatment of the question of legality is given in Chap. VIII, on legality of Commissions of Array.

⁵⁷ Rushworth, *Collections*, IV, 526; C. J., II, 464.

⁵⁸ C. J., II, 466.

⁵⁹ Rushworth, *Collections*, IV, pp. 533, 534. Other references to the answers which passed back and forth are found on pp. 528, 531, 538, 539, 543, 544, 545, 547.

to belong to the trainbands, or militia, in his kingdom, to rise, march, muster, or exercise by virtue of any order or ordinance of either house, or both houses, of Parliament, without consent or warrant from him upon pain of punishment, according to the laws.⁶⁰ He justified his sole control of the military by reference to statutes such as 7 Edw. I.⁶¹

The work of the Parliament was now concerned with organizing the kingdom for war and justifying its course by resolutions, which were promptly ordered printed and distributed. These served as replies to proclamations issued by the King from his headquarters in York. Both circulated their printed arguments in an appeal for the support of the country.

Particularly did the King declare the parliamentary ordinances for the ordering of the militia illegal and void.⁶² The Commons rejoined by arguments supporting their legality and ordering citizens to obey them under penalty.⁶³ The King declared that no subject should take up arms except by order of his majesty.⁶⁴ The Parliament replied, denying his right so to order.⁶⁵ Petitions continued to come in from all parts of the country.⁶⁶ Some of these pertained to "religious innovations" and prayed against them.⁶⁷

The orders to the sheriffs and lords lieutenants from the Parliament to raise the trainbands and other volunteers read, "for the safety of his Majesty's person, the Parliament, the city of London, and the Country."⁶⁸ In London the Commons ordered that the lord mayor, alderman, sheriff, and common-councilmen be forthwith advised from the House to direct that the trainbands of the city be put in readiness for the safety of the king's person, the city, and the Commonwealth.⁶⁹

The Parliament had named lords lieutenants and deputy lieutenants for the various counties.⁷⁰ Those persons were to proceed to the chief cities and towns, issue warrants and orders to the sheriff and head constables to summon the trainbands, and such volunteers as might respond, to appointed places and at specified times, and there read to them the parliamentary

⁶⁰ Hansard, *Parl. Debates*, II, 1354.

⁶¹ *Ibid.*, p. 1354.

⁶² Rushworth, *Collections*, IV, 532, 534, and *passim*.

⁶³ *Ibid.*, p. 534.

⁶⁴ *Ibid.*, p. 534; Hansard, *Parl. Debates*, II, 1354.

⁶⁵ Rushworth, *op. cit.*, IV, 551.

⁶⁶ *Ibid.*, pp. 554, 555.

⁶⁷ *Eng. Hist. Tracts* (U. of M.), Vol. X(or XI).

⁶⁸ C. J., II, 382.

⁶⁹ *Ibid.*, II, 366.

⁷⁰ C. J., II, 426, 485.

proclamations and muster them into service under designated officers.⁷¹

The Parliament endeavored to avoid a taint of treason by making it appear that it was not raising troops against the person of the king, but rather to protect him and his authority.⁷² Meantime, the King had gone to York and there raised his standard. The nucleus of his army was made up of the remnants of the forces raised for service against the Scots, with some additional cavaliers who joined him. The force was not large and needed supplementing. On June 11, 1642, the King issued the first of the famous Commissions of Array.⁷³ Subsequently the practice was kept up, and commissions for nearly every county in England followed.⁷⁴ They were addressed to known royalist leaders and sympathizers in the principal localities of the country and commanded military service. The King's proclamations now condemned the parliamentary ordinances as illegal and justified his Commissions of Array.⁷⁵

On June 18, the Commons and Lords declared the Commissions of Array illegal.⁷⁶ Following this came the proclamations of Charles and the resolutions and answers of the Com-

⁷¹ *Eng. Hist. Tracts* (U. of M.), Vol. X, tract "A Relation of the Execution of the Ordinance of Parliament."

⁷² *Ibid.* All the resolutions and orders of the Parliament followed consistently this practice; the forces were being recruited, not to attack the king, but to protect him.

⁷³ Rushworth, *Collections*, IV, 655, 656; Cobbetts, *Parl. Debates*, II, 1382. The commission sent into Leicestershire in June is the one quoted by Rushworth. It started, after the salutations: "Charles Rex, by the Grace of God, etc. . . . to our Right Trusty and Well Beloved. . . . Greetings; Whereas, there are now, at, or near, London, great Forces levyng and monies raising . . . maintaining an army by order of our two Houses of Parliament, not only without our consent but contrary to our several express commands. . . . We have found it necessary to raise and levy forces for the defense of the Protestant Religion, our Person, the Houses of Parliament, the Laws of the Land, the liberty and property of the subject, and the privileges of Parliament. Reposing trust in you we do order . . . etc." The order then commands the calling of the military forces in each locality at appointed times and places. (See also example in *Eng. Hist. Tracts* (U. of M.) Vol. XI and *passim*.) Thus according to their announced intentions, each was raising forces to protect the other, not to wage war.

⁷⁴ *Vide* Chaps. VI, VII, following. (Examples of the commissions in the various shires and the details of administration.)

⁷⁵ *Eng. Hist. Tracts* (U. of M.), Vol. X. A proclamation of Charles from York, June 20, 1642, on "The Lawfulness of Our Commissions of Array." This one and others which follow contain the best arguments in support of the king's position.

⁷⁶ C. J., II, 632; Rushworth, *op. cit.*, IV, 534; also *Eng. Hist. Tracts* (U. of M.), Vol. XI.

mons; a joint debate conducted by this method in the form of printed tracts and broadsides, each side condemning the position of the other and justifying its own, was waged, with the country at large as the judge.⁷⁷

By June 27, the Commons had created a committee on Commissions of Array, to deal with the problems incident to their attempted enforcement by the king.⁷⁸ On July 20, the House of Commons ordered that judges and justices of assize be required to publish on the circuits that the Commission of Array was against the law, liberty, and property of the subject.⁷⁹ Charles issued a contrary order, justifying his course, condemning the parliamentary ordinances, and ordering the judges so to announce.⁸⁰

Thus, by the summer of 1642, the issue was joined over the control of the military, the all-important object sought for by both sides. The evils of the military practices of the first two Stuarts—billeting, martial law, use of military commissions, irregular taxation for military purposes, impressment, and abuses of coat-and-conduct money—had been the most important complaints in the process of building up the opposition. Now, the control of the military establishment through the ordinances or commissions was to determine the outcome of the impending conflict. Whichever side could make its order most effective in actual operation would inevitably win the contest.

Two sets of theories, each right to some extent, had been advanced and argued. The King, basing his claims upon historical precedent, custom, and the ancient prerogatives of the crown in matters military, had reinstituted the old quasi-feudal order, the Commission of Array, as expressive of his sole right to call upon the subject for service. Parliament was expressing

⁷⁷ The tracts containing the arguments are reprinted in Rushworth, *Collections*, IV, 658 (a declaration of the Commons on the illegality of the Commission of Array); 659-61 (a proclamation of Charles supporting the Commissions); 661-63 (the answers of Parliament); 669, 670, 672, 673, 681, 691, 704, 722, 725, 748, 756 (miscellaneous declarations on the subject from both sides). *Eng. Hist. Tracts* (U. of M.), Vol. X, is made up almost entirely of tracts bearing on the question. C. J., II, 632.

⁷⁸ C. J., II, 642, 643. Their concern was to be with preventing the carrying out of the king's orders. They also formed the resolutions condemning the Commissions.

⁷⁹ *State Pap., Dom.*, 1641-43, p. 358; *Eng. Hist. Tracts*. (U. of M.), July, 1642, Vol. XII.

⁸⁰ *State Pap., Dom.*, 1641-43, p. 349.

the new tendencies in the state, those which denied the exclusive and absolute control of the sovereign over so important a matter, and establishing the legal fiction that under certain circumstances the Parliament should not only act in conjunction with the king, but even independently of him.⁸¹

But the time of theorizing was past; the battle of words was at an end, a battle of force was to ensue; the question was no longer to be one as to the legality of the Commissions of Array or the legality of the parliamentary Militia Ordinances, but rather a more practical one; which side could most effectively put its order into effectual operation? Which, Parliament or King, could send agents out into the land and secure the greatest amount of support, not in words or argument, not moral support but support in men, strong men, armed men, ready to die in the cause? Upon that, and that alone, would the issue rest.

The Parliament might wage a word battle and support its side by legal fictions and theories.⁸² But theories would not win battles when battles had to be won. So the scene shifts from London, the area of theorizing, and we traverse the length and breadth of the land to see the Commissioner of Array and the parliamentary lord lieutenant, each armed with the order of his master, each demanding military service from the same men, each bent on furthering the claims of his superior, claims that were unalterably opposed to each other; to see them wage a series of miniature civil wars in nearly every shire in England, the sum total of results to decide the larger issue.

⁸¹ The whole question of the legality of parliamentary actions in their continued interference with the military establishment, culminating finally in their assumption of complete and absolute direction, in the Militia Ordinances, is treated below in the chapter on "Legality" (Chapter VIII, below).

⁸² Ranke (*Englische Geschichte*, IX, 129) thus explains one fiction: "An der Fiction dass die Uebereinstimmung der beiden Häuser den königlichen Willen in sich schliesse, hielt es auch noch als dann fest, als der König in Person einem Entgegengesetzten auf das bestimmteste ausgesprochen hatte."

CHAPTER VI

THE STUART PERIOD—II

COMMISSIONS OF ARRAY IN THE SHIRES

THE final outcome of the Civil Wars in England was determined largely by the results of the many, smaller conflicts in the shires. The several, larger engagements, which historians regard as the decisive battles, were made possible and their results foreshadowed by the contests in the counties. As soon as King and Parliament resorted to arms to adjust their differences, the little, civil contests in the shires ensued. Moreover, contrary to common opinion, there were no wholly parliamentary or royalist counties. In each there was a group favoring the Parliament and a group loyal to the King; these fought for control of the district. And the contest centered in the Commission of Array. The King issued his order for men to enlist in his cause, and Parliament sent out the Militia Ordinances demanding service in its behalf. The issue in each locality was then joined. And on the combined results of these local affairs was to rest the fate of the kingdom as a whole. It is essential, then, to investigate conditions just previous to, and at the outbreak of, the Civil Wars, an approach hitherto not emphasized by writers on the period. Excellent separate treatments of the parts played by various counties during this period are to be had, but a general survey of all for purposes of comparison and analysis is herein attempted. Geographical, economic, and social aspects have been treated when these helped to determine the sympathies of the area, and some early history has been briefly sketched when that has a bearing.

BEDFORDSHIRE

The county of Bedford illustrates the troubles of Parliament in a district regarded as generally favorable to the popular cause. Formerly joined to Buckinghamshire—to 1575—the influence

of Hampden contributed to make Bedford a "Parliamentary shire," but the domination was by no means complete.¹ Bedford, city and county, resisted the ship money assessments,² and in 1637-38 there was some £1200 still due from 660 persons.³ In 1639 the district continued to be much in arrears.⁴ Certainly the enthusiasm was not all that might be desired.

In the Long Parliament the delegation was at first divided, but later on was solidly against the court. In spite of this, the various parliamentary assessments of 1642-43 fared as poorly as the ship-money collections. After failures, a committee was named in March, 1642, to further the cause in Bedford.⁵ In April, 1643, the money was not forthcoming in proper amounts, and another committee was appointed to investigate the situation and report back to the House.⁶ Later on a judgment of contempt was threatened against the committee "unless they do give Speedily an account thereof."⁷ Difficulty was also experienced in raising the quota of horse, under the Ordinances, assigned in September, 1643; and in a resolution it was threatened to send the Earl of Manchester to enforce them.⁸ In a report made at the bar of the House on October 7, 1643,⁹ the "malignant clergy" were complained of as aiding the royalist cause by one Captain Temple, who had opposed the Commissions of Array and fought for the parliamentary cause in Bedfordshire on a former occasion.

This and other similar reports caused that body to order the committee on plundering ministers,¹⁰ "to find some way of putting good ministers in the County of Bedford into the Place and Room of ill-affected ministers in said county" and to name a sub-committee to "examine the Delinquency of such ministers and to certify them to the Committee."¹¹ Sequestrations were finally ordered in November, 1643,¹² and three

¹ *Vict. Co. Hist., Bedfordshire*, II, 40.

² *Cal. State Pap., Dom.*, 1635-36, p. 221; 1635, p. 487; 1636, p. 285.

³ *List of defaulters*, *Cal. State Pap., Dom.*, 1625-49, p. 574.

⁴ *Ibid.*, 1638-39, pp. 392, 530; 1639, pp. 197, 458.

⁵ *C. J.*, III, 1642-44, p. 16.

⁷ *Ibid.*, p. 49.

⁶ *Ibid.*, p. 26.

⁸ *C. J.*, III, 1642-44, p. 260.

⁹ *Ibid.*, p. 266. That the king's party had a fairly strong force operating in this area and recruited there is shown by the surprise and capture of this same Temple and his party. He escaped, however, just previous to his appearance before the House.

¹⁰ A committee of the House for this and related purposes.

¹¹ *C. J.*, III, 1642-44, p. 301.

¹² *Ibid.*, p. 310.

officers of the army were named to aid the Bedfordshire committee in December.¹³ Commissions of Array were held at least from 1643 on with some degree of success.¹⁴

After all the efforts at collections in a parliamentary county, only £1500 was secured by May, 1644; this was used for the benefit of the garrison of Aylesbury.¹⁵ These situations show that parliamentary troubles in sympathetic areas were about as pronounced as those of the King in sections theoretically solid in his behalf. Evidence of this sort seems also to discredit theories that any counties were "unanimously" for either Parliament or King.

Difficulties in raising military forces for any cause were just as pronounced. In 1638-39 the Earl of Cleveland, lord lieutenant of the county, was ordered to provide two hundred men for the trainbands to be used in the Scottish wars. The quota was only partly forthcoming, and many desertions were reported.¹⁶ In the summer of 1640, fresh demands for four hundred men were made; this met with resistance, and the sums raised for coat-and-conduct money fell far short of expectations.¹⁷ The royalist cause fared even worse. A contemporary writer said of the situation in Bedfordshire: "The king has not there any visible party or one fixed quarter."¹⁸

The lukewarmness of the people in responding to the Militia Ordinances finally drew a sharp proclamation from Sir Samuel Luke, in charge of mustering, warning "those cold and insensible persons," who had refused to heed the call to arms "for the service of the State and their own safety" to report at once, or he would "proceed against them with severities."¹⁹ For this and other efforts he was given a vote of thanks by the Commons.²⁰

The Commissions of Array supplied enough men to lead to a rally at Bromhall Hall, two miles west of Bedford, and some damage was done.²¹ Sir Lewis Dyne was the leader, and through his exercise of a Commission of Array at Shefford,

¹³ *Ibid.*, p. 334.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. 481.

¹⁶ Cal. State Pap., Dom., 1638-39, p. 514; 1639, pp. 100, 103-93; 206, etc.

¹⁸ Clarendon, VI, 327.

¹⁷ *Ibid.*, 1640, p. 206.

¹⁹ Preserved in the pages of the Royalist newspaper, the *Mercurius Aulicus*, July 2-8, 1643; quoted in *Vict. Co. Hist., Bed.* II, 45.

²⁰ C. J., III, 1642-44, p. 156.

²¹ Report of Captain Temple to the Commons, in C. J., III, 1642-44, p. 266.

October 30, 1643, partial success was attained.²² By 1644-45, Bedford's failure to render support in proper fashion was made the subject of frequent comment, and the practice of pressing men had to be resorted to.²³

The evidence thus presented seems to support a number of conclusions. Bedfordshire, reputed by most writers a distinctly parliamentary area, was not as enthusiastic for the popular cause as has been generally supposed. This seems to be established by its lack of response to the Commons' demand for men under the ordinances and by the difficulties in securing the assessments. Again, the workings of the Commissions of Array reflect the fact that royalists were able to raise men by this means and in this area as late as the autumn of 1643. As has often been observed, the true test of the loyalty of a people in any cause is their response to war-time demands; and if this is accepted, the results attained by the Militia Ordinances and the Commissions of Array well reflect the sentiment of the people of Bedfordshire.

BERKSHIRE

Berkshire or "Berks," the royal county, had been noted for its devotion to the crown and for the quality of its fighting men. In 1295, two thousand men had been raised in the county as a stipendiary force for service abroad.²⁴ This levy was not made up of inexperienced peasants but experts, "slingers and bowmen capable of offensive and defensive action and well equipped with adequate arms."²⁵ Similarly, in 1316, Berks was solicited for "well-equipped men, foot soldiers."²⁶ Commissions of Array were issued for the county on various other occasions, evidently with success in 1377, 1378, and 1380.²⁷ The commission of 1380 was made out to nine enumerated persons and the sheriff, and ordered attendance of all efficient, male persons, from sixteen to sixty years of age.²⁸

Thus, throughout the years, the Commission of Array seemed to supply men for military service as required. The

²² *Gent. Mag.*, xciii, pt. 2, p. 30, quoted in *Vict. Co. Hist., Bed.*, II, 46.

²³ *Vict. Co. Hist., Bed.*, II, 48. ²⁴ *Parl. Writs*, I, 270.

²⁵ *Ibid.*, *Hominum tam sagittariorum quam balistariorum potentium ad insultandum et se defendendum, et armis sibi competentibus bene munitorum.*

²⁶ *Ibid.*, II, 464-65, *un homme de pe forcible et defensible.*

²⁷ *Pat. Rolls*, 1377-81, p. 306. ²⁸ *Ibid.*, 471, 473.

presence within its borders of Windsor and Wallingford, the royal castles, made the shire a royal stronghold, loyal and efficient. When troops were needed, Berks was called upon and responded.²⁹

In the Stuart period, troops had been supplied to James I³⁰ and Charles I.³¹ However, in spite of the strong royalist sympathies prevalent, the latter sovereign stirred up opposition in the county by his demand for a "voluntary gift" in 1625 and his levy of ship money in 1628 and 1635-37.³²

Despite this, the shire was almost solidly royalist in the first period of the Civil Wars, with some slight evidence of a small amount of parliamentary sympathy.³³ On February 10, 1642, the Earl of Holland was named lord lieutenant,³⁴ and soon a deputy lieutenant was added.³⁵ Lord Lovelace acted as the leader of the King's forces.³⁶ A parliamentary committee was later named to assist in putting the ordinances for the militia into effect, a task that was evidently meeting with difficulty.³⁷ Commissions of Array were issued for the county, and there was little opposition to them; in fact, they raised large bodies of troops in both 1642 and 1643, much to the disgust of the Commons.³⁸

Little attention seems to have been paid to the shire during the remainder of 1642 and the early part of 1643, Parliament probably preferring to expend its energies in a more fruitful area where odds were not so overwhelming. The lack of the "preservation of the peace," reported to the Commons, which usually meant the successful carrying out of the king's Commissions of Array, disturbed the Parliament in August, 1642, and by a resolution the lord lieutenant was ordered to "take some care of it."³⁹ In October, 1642, the Commons sent a representative into the shire to investigate the situation.⁴⁰

²⁹ *Vict. Co. Hist., Berkshire*, pp. 131 ff., contains a full and complete account of early military activities in Berkshire.

³⁰ *Cal. State Pap., Dom.*, 1611-18, p. 86.

³¹ *Ibid.*, 1625-26, p. 3; 1637-38, pp. 110, 380; 1629-31, p. 8; 1627-28, p. 451.

³² *Ibid.*, 1625-26, p. 397; 1627-28, p. 25.; 1639-40, p. 588.

³³ "Miscellaneous Broad-sides and Proclamations" quoted in *Vict. Co. Hist., Berks*, p. 148, show a slight anti-royalist feeling.

³⁴ *C. J.*, II, 424.

³⁸ *Ibid.*, p. 718.

³⁵ *Ibid.*, p. 483.

³⁹ *Ibid.*, p. 718.

³⁶ Ranke, *Englische Geschichte*, IX, 143.

³⁷ *C. J.*, II, 595.

⁴⁰ *C. J.*, II, 824.

Notwithstanding the lack of parliamentary gains and the absence of sympathy for that cause, the Commons proceeded with the sequestration of estates in Berks.⁴¹ In August, 1643, the House of Commons removed the Earl of Holland as lord lieutenant.⁴² He had been acting as the official for both Berks and Middlesex.⁴³ No immediate successor was named, apparently, but on December 30, 1643, Sir F. Pyle, Baronet, was appointed high sheriff of the county, and more parliamentary activity is noted.⁴⁴ No further records of the use of the Commissions of Array in the county are found. The parliamentary cause became more active and more popular from 1643 on.⁴⁵

Berkshire furnishes an example of a county, strongly royalist, but with some spark of sympathy for the opposition and one in which the king's Commissions of Array did all that was expected of them in the early years of the contest, 1642 and 1643, with little or no opposition. The peculiar character of the county, with its royalist strongholds and its historical antecedents, made this possible.

BUCKINGHAMSHIRE

A "Bucks" squire, John Hampden, sounded the first notes of the coming conflict between Charles I and his Parliament. This was significant of the whole attitude of the county though Oxford, which was near and influenced sentiment in Buckinghamshire, was a royalist center. Intense sympathy for the popular cause prevailed and was evidenced by petitions and subscriptions.⁴⁶

In January, 1641, a petition, very friendly to the cause of Parliament, was sent up from the county.⁴⁷ Lord Paget was named lord lieutenant of the shire,⁴⁸ but deserted the cause and left to join the King.⁴⁹ The Commons considered the appointment of a successor at once, but "upon debate, it was decided to

⁴¹ C. J., III, 43.

⁴² *Ibid.*, p. 216. No record of the naming of a successor appears in the Commons records.

⁴³ *Ibid.*, p. 216.

⁴⁴ *Ibid.*, p. 354.

⁴⁵ For full discussion of the part of Berks in the wars see *Vict. Co. Hist., Berks*, pp. 148 ff.; King, Cooper, *Hist. of Berkshire*, pp. 140 ff., also see "Berkshire" in *The Counties of England* by Ditchfield, P. H., and others, II, 252 ff.

⁴⁶ C. J., II, 370-71, 519, and other references (see indexes).

⁴⁷ *Ibid.*, pp. 370-71.

⁴⁸ *Ibid.*, p. 424.

⁴⁹ *Ibid.*, 638.

let the same rest for a while," and the House gave orders for the deputy lieutenants to put the parliamentary ordinances into effect.⁵⁰ Later on, however, Lord Wharton was named to the position; he seems to have been a popular selection as we find indications that the soldiers, trainbands, and volunteers expressed their desire for his appointment.⁵¹

When hostilities commenced, Bucks raised a militia of its own, which operated from Aylesbury, the parliamentary base of action.⁵² Geographical conditions worked to strengthen the popular cause; without royalist strongholds like Windsor and Wallingford in Berkshire, it was close enough to London to be greatly influenced by that center of parliamentary activity.

No record of the use of Commissions of Array, or even of their attempted institution in the shire, appears; Oxford was sympathetic with the royalists and made contributions of money and men,⁵³ but little other sentiment for the king is apparent.

Buckinghamshire later offered a loan of £6,000 for "the affairs of Ireland," in April, 1642, which was accepted by the Commons,⁵⁴ and in a vote of thanks that body hoped that other counties would do likewise. It was ordered repaid out of money collected in the county.⁵⁵ Parliamentary orders were carried out continuously in the county with no recorded interference.⁵⁶

We here have a case of a shire definitely and unanimously committed to the parliamentary cause, with no attempt to put the Commissions of Array into effect or an attempt that succeeded so poorly, if it was made, as to leave no trace.

CAMBRIDGESHIRE

Cambridgeshire is an example of one of those areas that took little part in the early years of the Civil Wars. There seemed to prevail a great deal of apathy among the inhabitants, a lack of interest in the contest either one way or the other.

⁵⁰ *Eng. Hist. Tracts* (U. of M.), Vol. X (25 May-June, 1642).

⁵¹ C. J., II, 638; also *vide* 624, same volume.

⁵² See Ditchfield, P. H., *The Counties of England*, "Buckinghamshire," I, 382, for complete discussion of the activities.

⁵³ See Oxfordshire, below. Oxford in most things influenced Buckinghamshire as much as it did Oxfordshire. Though the royalists operated from there, they accomplished little in Buckinghamshire.

⁵⁴ C. J., II, 519.

⁵⁵ *Ibid.*, pp. 611-12.

⁵⁶ See index, *Parl. Records* (Commons Journals).

A few bits of evidence, however, seem to indicate a little more sympathy for the parliamentary than for the royal cause.⁵⁷

The University was quite distinct from the rest of the county and was, of course, more royalist than any other one area. However, its influence, like that of Oxford in the same vicinity, was not great enough to commit the surrounding territory to its way of thinking.⁵⁸

Lord North was named lord lieutenant of the shire in February, 1642.⁵⁹ Arms were provided for the use of such troops as might be raised there in June.⁶⁰ Evidently a lack of interest prevailed in the enforcement of the parliamentary Militia Ordinances, as we find resolutions of the Commons urging that the work be pushed.⁶¹ This was on July 1, again on the 5th, and once more on the 29th of the same month. Some disorders occurred, as there appears a resolution for suppressing riots there in the records of the House September 5.⁶²

No account of the operations of the Commissions of Array in this shire appear. It is probable that what sympathy there was for the royalist cause was manifested in offerings of plate and money, particularly from the University. As for the rest of the county there seems to be a distinct indication of lack of interest, although there may have been an increase in loyalty to Charles later in the contest.⁶³

CHESHIRE

Cheshire has significance for a variety of reasons. In the first place, of three great palatinates, it is the most ancient;⁶⁴ second, it is illustrative of a situation in which the Commissions

⁵⁷ Ditchfield, P. H., and others, *The Counties of England*, "Cambridgeshire," II, 31ff. There is little in the official records that seems to support this. Apathy is more the rule.

⁵⁸ See Oxfordshire below, and comment in Buckinghamshire, *supra*.

⁵⁹ C. J., II, 130ff.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Ditchfield so believes; *op. cit.*, II, 31ff.

⁶⁴ Cheshire was a palatinate at least from the Conquest. Due to the proximity of the Welch Marches, the earls had acquired extensive palatine rights. Henry VIII rendered it subordinate to the crown by an act of Parliament, but the separate jurisdiction was retained, the title of earl continues to be assumed by the eldest son of each monarch, associated with that of Prince of Wales. By a statute of William IV (C. 70, 1830) the separate jurisdiction was finally abolished. See discussion in Vol. XXXVII of Chetham Society Pub. (1856) in "The Rights and Jurisdiction of the County Palatine of Chester, the Earls Palatine, the Chamberlain, and Other Officers," by Joseph Brooks Yates, F.A.S., G.S. and P.S.

of Array succeeded for a time in gaining almost complete mastery of the county; third, in it also an attempt at neutrality, and later at a truce, between the king's commissioners and the representatives of the Parliament, was successfully attempted; and, fourth, it was a shire in which border service was the prevailing type of military custom.⁶⁵ Cheshire well reflects geographical, social, economic, political, and religious influences in such a way as to typify the contest in England as a whole.

In spite of the early and extensive development of palatinate rights, Chester was thoroughly bound, usually by personal loyalty, to the English crown.⁶⁶ Since the conquest the grant of this important border area had been made to a kinsman, or a loyal supporter, of the sovereign. Evidence of the loyalty thus maintained was displayed repeatedly on important occasions.⁶⁷

The Earl of Derby, who made Warrington, Lancaster, his headquarters, was the leader of royalist adherents, and so intense was the devotion of this area to the king that it was planned to have Charles, upon leaving London, come to this section instead of to York to raise his standard. The reasons for the change in plans are not clearly known, but it is conjectured that enemies of the Earl poisoned the King's mind as to his loyalty and led to the selection of Nottingham.⁶⁸

⁶⁵ Cheshire is discussed in connection with border service in Morris, J. E., *The Welch Wars of Edward I.*

⁶⁶ William I made his nephew, Hugh of Avranches, first Earl of Chester; Henry III conferred the earldom, which had lapsed, in 1254 on Prince Edward; and in 1301, Prince Edward (later Edward II) was made Prince of Wales and Earl of Chester, which titles have since been retained. On the eve of the Civil War, James, Lord Strange, was, by the death of his father, the seventh Earl of Derby. This powerful family, alike influential in Lancaster and Chester, was strong in support of the crown.

⁶⁷ Being a border county, the essence of its existence was military service. It supplied men not only for the Welch wars but also for service elsewhere. See Morris, J. E., *Welch Wars of Edward I*, and an article by Joseph Mayer, F.S.A., in *Transactions of the Historic Society of Lancashire and Cheshire*, Vol. XI (1858-59), pp. 85ff. This article also throws interesting light on the character of the weapons used in this period and is illustrated by woodcuts of the same.

⁶⁸ The matter is discussed at length by James Kendrick in *Transactions of the Historic Society of Lancashire and Cheshire*, Vol. IV (1851-52), pp. 18ff. This illuminating account of the matter is based on some manuscripts found in May, 1850, at Haughton Green, near Warrington. They were discovered concealed in a walled-up cavity in the attic of an old farmhouse, formerly the residence of one Thomas Sargeant, who in 1640 was the constable of Haughton. The varying occupation of the district by parliamentarians and royalists no doubt led to their concealment. The account tells of the preparations made by the Earl to receive the King.

Two petitions of opposite character were sent to Parliament from Cheshire. The first was presented by Sir Thomas Aston and was in favor of the church and government. It was signed by four noblemen, eighty-six knights and squires, seventy divines, three hundred "gentlemen," and six thousand freeholders.⁶⁹ The anti-Episcopalians countered with a rival petition purporting to be signed by a greater number of each of the above classes, viz., eight noblemen, one hundred ninety-nine knights and squires, one hundred forty divines, seven hundred fifty-seven "gentlemen," and twelve thousand freeholders.⁷⁰ The large numbers of signers in the case of each document raises doubt in the minds of some students of the time as to their authenticity.⁷¹

Lord Strange was clearly not in sympathy with the parliamentary activity in 1641-42.⁷² He was accused by the popular supporters of being the great ringleader of the "Popish faction and Malignant partie and keeps his rendezvous at Warrington, whither great multitudes of ill-affected people, both of Lancashire and Cheshire do daily resort."⁷³

The king's Commission of Array was dispatched to Chester, and pursuant to it the inhabitants were ordered to appear at the Roode, on Friday, July 1, 1642.⁷⁴ The inhabitants protested on the ground that the Parliament had declared the Commissions illegal.⁷⁵ In spite of this the work of the Commissioners of Array went steadily forward, and by August and September it was estimated that the Earl headed 20,000 troops "well armed

⁶⁹ State Papers, Vol. 479, Nos. 6 and 7.

⁷⁰ *Ibid.*

⁷¹ Gardiner considers the Puritan petition a forgery, possibly the work of Prynne (*Fall of the Monarchy*, II, 89, note, and *Hamilton Papers*, Preface, IV).

⁷² On February 10, 1641, he had been named Lord Lieutenant of Chester by the Parliament (C. J., II, 1640-42, p. 426), but had refused to accept the place. (*Ibid.*, p. 486).

⁷³ So described in a letter of one Thomas Jesland of Atherton in Lancashire, to a "Reverend Divine" in London, under date of December 2, 1642, in *Transactions*, Hist. Soc. of Lanc. and Ches., IV, 20. Also printed in full in Ormerod's "Civil War Tracts of Lancashire," Chetham Society *Transactions*, II, 63.

⁷⁴ *English Historical Tracts* (U. of M.), Vol. XII, 11 Aug.-Oct., 1642.

⁷⁵ *Ibid.* Petitions had previously been sent up from Chester. A record of one is found in C. J., II, 1640-42, p. 89, which was ordered referred to the Committee for Ministers' Remonstrances. Another came from the gentry, May 22, 1641 (*Ibid.* p. 154). At least one of these had first been sent to the King and (so it reads) referred by him to the Parliament.

and devoted to their sovereign."⁷⁶ From these, on September 24, 4,000 foot, 200 dragoons, 100 horsemen, and 7 pieces of ordnance were conducted to the siege of Manchester, then a parliamentary stronghold.⁷⁷

The King's control of the county made possible the arrest of those who sought to oppose the Commissions of Array.⁷⁸ By November the Commissioners of Array seem to have been admittedly in control of the county.⁷⁹ As early as August the seriousness of the situation from the parliamentary viewpoint had been recognized by the Commons in an order of that body that the committee for defense consider "a speedy means of protecting some of the counties, among them being Chester."⁸⁰ Deeming themselves quite secure, the Papists had "demanded that their arms be restored," and on July 7, 1642, the Commons considered this "peremptory command."⁸¹ Lord Viscount Say and Seale, master of the Court of Wards and Liveries, was made lord lieutenant,⁸² and later on, June 27, Sir William Brereton was approved as deputy lieutenant.⁸³ "The Pious and truly Valiant Collonell, Sr. William Brereton, Baronet," as he was referred to,⁸⁴ was later to be the chief leader of the popular cause in the country. Reference has also been made to the

⁷⁶ Kendrick in *Transactions*, Hist. Soc. Lanc. and Ches., IV, 19. Troops were forthcoming and petitions against "inovations in religion" and defending bishops ("Instituted in the time of the Apostles") were sent in from Cheshire; they feared the "arbitrary government of a numerous Presbitery," conducive to "Anarchy" and "prey that some course be taken to suppress the future dispensing of such dangerous discontents among the common people." *Eng. Hist. Tracts* (U. of M.), Vol. X, 25, May-June, 1642. There was little question of the attitude of the county. For *contra* on petitions see A. M. Robinson, F.R.G.S., in *Transactions*, Hist. Soc. of Lanc. and Ches. for 1895, Vol. XLVII (new series, Vol. XI), p. 138, who states that Cheshire did not volunteer any such petitions.

⁷⁷ *Ibid.*, p. 19.

⁷⁸ Oct. 1, 1642, "The King hath taken prisoner Sir Richard . . . (?), Sir Thomas Delves, M. Mannering, M. Birkenhead and his son, and divers other Gentlemen of Cheshire for opposing the Commissions of Array." Tract, "Latest Remarkable Truths on" (London, 1642), *Gay Tracts* (Harv.) 1642, 944. The Parliament, when it gained the upper hand, ordered the release of such persons. Tract, "A Durial," *Gay Tracts* (Harv.) 300.5.

⁷⁹ The Parliamentarians admitted this supremacy in a Commons resolution, Nov. 26, 1642 (C. J., II, 1640-42, p. 866).

⁸⁰ C. J., II, 1640-42, p. 743. Salop, Hereford, Worcestershire, Lancaster, Monmouth, and the counties of North Wales were the others in which prompt action was thought desirable.

⁸¹ *Ibid.*, p. 659.

⁸² C. J., II, 1640-42, p. 495.

⁸³ *Ibid.*, p. 642.

⁸⁴ Tract—*Parliamentary Successes in Cheshire*, Chetham Soc. Pubs., Vol. 65 (new series), pp. 18ff.

fact that the Commons had taken steps to stem the tide of royalist ascendancy in the shire.⁸⁵

The ordinances of Parliament relating to the mustering of the militia were sent into Chester, with "the Advice and Direction of Both Houses of Parliament, to Sir William Brereton and the rest of the deputy lieutenants of the county of Chester, for the regulating of the soldiers and orders to put the ordinance concerning the militia into execution through the whole country."⁸⁶ The cause gained ground steadily.⁸⁷ Meantime, the King, from York, had on June 20, 1642, informed his subjects "of the lawfulness of our Commissions of Array,"⁸⁸ and both Houses had stated the opposite interpretation on July 20.⁸⁹ With the rise in parliamentary strength after the early period of royalist domination, we come to another distinctive feature of the Cheshire situation, the efforts for neutrality and pacification. Attempts to win over the Earl of Derby to the parliamentary cause were made by a delegation from Manchester, who promised him that "if his Lordship would engage in their good cause, he should have command equal to his own greatness or any of his ancesters"; the historian of the house of Stanley informs us that the Earl indignantly refused the offer,⁹⁰ even though he was distressed by a rumoured undeserved mistrust by his sovereign.⁹¹

An attempt was next made to bring about a state of neutrality. This was not confined to Cheshire, but was to include Yorkshire and Lancashire as well. A group of Yorkshire men, Lord Fairfax, one Mr. Belasis, and a Sir William Saville among them, sent a draft of the proposals to Parliament on September

⁸⁵ See p. 3 and note 13, this chapter.

⁸⁶ *Eng. Hist. Tracts* (U. of M.), Vol. XII, 11 Aug.-Oct., 1642.

⁸⁷ A letter sent by Brereton to the Commons read that he had "prospered well in raising forces in Cheshire" and "now hath heare upon 2000 Horse and foote;" that they had made divers sallies out of Nantwich and driven the commissioners of Array from place to place. "A Durial," 1641-42, *Gay Tracts* (Harv.), 300, 5.

⁸⁸ *Eng. Hist. Tracts* (U. of M.), Vol. X.

⁸⁹ C. J., II, 1640-42, p. 683.

⁹⁰ John Seacome, house steward to William, ninth Earl of Derby. See Kendrick in *Transactions*, Hist. Soc. Lanc. and Ches., IV, 20 and note.

⁹¹ *Ibid.*, pp. 19, 21. The writer thinks that the mind of Charles had been poisoned as to the earl's disloyalty by ill-advised councillors, who wanted him to go to York instead of to Warrington. This reported estrangement no doubt gave encouragement to the parliamentary party in their plan to alienate him from the King.

29, 1642. This document, known as the Treaty of Pacification made at Bunbury in December, 1642 (initial form) contained various provisions for disbanding the military forces on both sides, releasing prisoners, demolishing fortifications, mutually restoring goods seized, and the publishing by the King through his commissioners of Array and by the Parliament through the deputy lieutenants of signed statements that neither would send any more armed forces into the respective counties. It contained divers other provisions also.⁹² The scheme received no support in the Commons; on the contrary, it was vigorously condemned by parliamentary broadsides.⁹³ Though it would have seemed that, if enforceable, the arrangement would have worked to the advantage of the popular cause, it never had a chance of approval in the Commons.⁹⁴ Again in January, 1643, the matter of the articles of peace was brought up, but by a declaration of both Houses it was again renounced.⁹⁵

Meantime, signs of parliamentary successes became apparent. Colonel Brereton was pursuing vigorous methods to forestall the King's commissioners of Array. Acting as commander-in-chief for the forces in Cheshire and neighboring counties, he had defeated the royalists under Sir Thomas Aston near Nantwich (Nantwich), again at Torperly in February, and six weeks later at Middlewich.⁹⁶

From this time on the tide of battle changed in Cheshire. Commissions of Array failed and there was more support of the Parliamentary cause.⁹⁷ The city of Chester fell into Brereton's hands early in 1645.⁹⁸ Steps were then taken to sequester

⁹² *Cheshire Civil War Tracts*, Chetham Soc. Pubs., Vol. 65 (new series). Here the pacification is printed in full.

⁹³ *Ibid.* The tract contains all the provisions with the parliamentary answer to each proposal.

⁹⁴ C. J., II, 1640-42, p. 794. Though neutrality would no doubt have been practically unenforceable, it would otherwise have seemed that the parliamentary cause at this stage in the proceedings would have gained by thus taking out of the war such strong royalist districts as Lancashire, Cheshire, and York. Of course, subsequent parliamentary victories in the first two, at least, amply justified the decision, but these were unforeseen in the fall of 1642.

⁹⁵ *Ibid.*, pp. 917, 919, 922.

⁹⁶ *Cheshire Civil War Tracts* Chetham Soc. Pubs., Vol. 65 (new series) pp. 18ff.

⁹⁷ Warrington, the key to the situation, fell after siege, (See Kendrick in *Transactions Hist. Soc. Lanc. and Ches.*, IV, 19ff., for account of siege based on contemporary materials.)

⁹⁸ *Cheshire Civil War Tracts*, Chetham Soc. Pubs., Vol. 65 (new series), pp. 127ff.

estates of Papists and delinquents and to collect various assessments levied upon territory under parliamentary control.⁹⁹ For the first time the county was definitely disassociated from the royalist cause, to which it had been so firmly attached in the early periods of the war.

Thus had Cheshire passed through the third of the three successive stages of its history in the Civil War period: the first, that of complete royalist domination under the King's commissioners of Array; the second, the period of stalemate with proposals of a truce and neutrality; and the third, that of the parliamentary control. Throughout, the contest between the Commissions of Array and the Militia Ordinances of the Parliament clearly reflect the progress of the rival causes.

CORNWALL

Cornwall combined a love and reverence for princes with a devotion to constitutional government. She had early grasped the meaning of this last phrase, and her representatives had played an important part in the struggle of the popular party against royal aggressions. Nevertheless, when hostilities broke out few Cornishmen of note opposed Charles. Cornwall, no doubt, wished for a peace and a compromise solution of the whole trouble.¹⁰⁰

The Commons named Lord Roberts parliamentary lord lieutenant of the county early in 1642;¹⁰¹ and in March deputy lord lieutenants were added.¹⁰² The King's Commission of Array was dispatched to the county, with Sir Ralph Hopton in charge, assisted by four former members of the House of Commons.¹⁰³ Sir Richard Buller and Sir Alexander Carew attempted to rally a parliamentary following, but evidently did not meet with a great amount of success, as shown by complaints in the Commons relative to the failure of the shire to respond to parliamentary appeals for aid.¹⁰⁴

Contrary petitions seemed to reflect the conflicting sympathies prevalent. In April, 1642, a "Committee of Gentlemen"

⁹⁹ *Ibid.*, pp. 115 ff.

¹⁰⁰ Daniell, Rev. J. J., *History of Cornwall* (4th Ed., by Thurston C. Peter), pp. 62-63.

¹⁰¹ C. J., II, 424.

¹⁰² *Ibid.*, p. 485.

¹⁰³ *Ibid.*, p. 710.

¹⁰⁴ *Ibid.*, p. 640.

presented a petition full of expressions of sympathy for "The King, the Church and the Commonwealth."¹⁰⁵ Another petition is found expressing condemnation for the above, and another (similar to it) expressing opposition to Hopton and his followers.¹⁰⁶

But the royalist cause continued to dominate for some time. The parliamentary Act of Contribution, asking for monies for the popular cause, met with little response in the shire.¹⁰⁷ The leaders of the forces of the Commons, Buller and Carew, were indicted by a grand jury for "unlawful assembly and riot."¹⁰⁸ The grand jury, which in this county rather peculiarly seemed to be functioning as a sort of royalist committee in charge, ordered one Sir Francis Bassett to raise the *posse comitatus*, which, numbering 3,000 well-armed foot soldiers, attacked several parliamentary strongholds successfully.¹⁰⁹

Meantime, the King's Commissions of Array had been put into effect, apparently with little opposition, being supported by some members of the Parliament.¹¹⁰ The Commons ordered these deserters "sent for."¹¹¹ The Parliamentary forces, numbering a fairly strong body, evidently under Buller, succeeded in preventing the horse raised in the county for the King at York from proceeding to their destination.¹¹²

But the stout Cornish militiamen adhered to certain customs even in their support of royalty. When Buller abandoned his position and withdrew into Devon, they refused to pursue him outside the limits of their own county. But, later, a force of 1,500 volunteers was raised and preserved Cornwall for the King.¹¹³

In July the Commons endeavored to strengthen the weak cause in the district and resist the King's commissions by naming a committee to go down "into the county of Cornwall and put

¹⁰⁵ *Ibid.*, p. 537.

¹⁰⁶ Tract, "A Declaration and Remonstrance," *Eng. Hist. Tracts* (U. of M.), Vol. XII.

¹⁰⁷ C. J., II, 640. The under sheriffs of Devon and Cornwall were to "be sent for" to give an account of the slowness.

¹⁰⁸ Daniell, *op. cit.*, p. 63.

¹⁰⁹ *Ibid.*, p. 63.

¹¹⁰ C. J., II, 710.

¹¹¹ *Ibid.*, pp. 710-11. The sheriff, one James Grells, was acting for the king.

¹¹² *Ibid.*, p. 665. This was in July, 1642.

¹¹³ Daniell, *op. cit.*, p. 64.

the ordinance of the militia into execution in that county."¹¹⁴ Also another deputy lord lieutenant was added for the county.¹¹⁵ By August little headway had been made, and the committee was reinstructed.¹¹⁶ In October, it was decided to render aid by water, and certain ships under the control of the Commons were ordered to proceed to the coast for purposes of co-operation.¹¹⁷ In December it was resolved to raise a thousand Dragoons in Somersetshire, Devon, and Cornwall, five hundred to be paid for and financed at the officers' own expense and five hundred "upon Adventure" for land in Ireland; that the five hundred be levied to be taken up "upon Ticket" among Papists, Commissioners of Array, non-contributors, and delinquents. . . . and that a thousand pounds be advanced to the officers upon account to be refunded out of the plate raised in Devon and Cornwall.¹¹⁸ This throws some light upon the parliamentary methods of finance.

The King's Commissions of Array continued to arrive in the county and to be put into execution by the leading men. One of these was addressed in part to one Humphrey Noy (Noye or Noie), who seemed to be devoted to the King and suffered sequestration of his estates for his loyalty.¹¹⁹ In the late summer and early autumn, August-October, 1642, the actions of Sir Ralph Hopton drew an attack from some parliamentary sympathizers in the form of a declaration.¹²⁰

In March, 1643, attempts at neutrality were made between the deputy lieutenants and the Commissioners of Array and were reported to the Commons.¹²¹ But representatives of the Commons were informed that such suggestions did not meet

¹¹⁴ C. J., II, 694. They were to use their best endeavors by all lawful means and ways for the preservation of peace in that county, according to their directions.

¹¹⁵ *Ibid.*, p. 696. One Mr. Humphrey Nicolls was added.

¹¹⁶ *Ibid.*, p. 732.

¹¹⁷ *Ibid.*, p. 818.

¹¹⁸ *Ibid.*, p. 878. This is not just clear. It suggests that 1,000 men were to be raised, 500 of whom were to be paid for by their own officers (to whom 1,000 pounds was advanced, later to be made up by contributions of plate and money), and 500 to be paid in promises of land in Ireland and taxes from Papists and others.

¹¹⁹ *Royalist Comp. Papers*, pp. 253-80 (J.L.M.), 2nd series, Vol. XXXVI; referred to in *The Visitation of the County of Cornwall*, Harleian Soc. Pubs. for 1874, pp. 158-59. Noy's estates were returned (in 1646) less a fine.

¹²⁰ "A Declaration," *Eng. Hist. Tracts* (U. of M.), Vol. XII, 11 Aug.-Oct., 1642.

¹²¹ C. J., III, 7.

with the approval of that body but that negotiations might progress and further reports be made.¹²² This was a little unusual as the Commons almost without exception adhered to the policy of refusing all offers of compromise and neutrality in other counties.¹²³ But in Cornwall the matter of proposed neutrality hung fire, at least until April, 1643.¹²⁴

On April 24, the House was informed that the negotiations were at a standstill, and "both sides again prepared for war."¹²⁵ This does not seem to have entirely concluded efforts of this sort, as we find evidence of an "agreement" between Sir Thomas Fairfax, parliamentary representative, and Colonel Goring, acting for the King, made at Truro, March 21, 1645.¹²⁶ The exact nature of the results of this are not apparent.

The affairs in Cornwall, then, present a number of interesting situations. The county seemed to be quite definitely royalist, even to the extent of drawing from the delegation of the House of Commons to support the King's program. Nevertheless, there was some parliamentary sympathy and adherence to constitutional precedents. Parliamentary strength increased later, due possibly to the abuse of the system of administration of the Commissions of Array, as one contemporary writer suggested.¹²⁷ Then the unique spectacle is presented of efforts at taking the country out of the contest entirely by attempted neutrality projects. But on the whole the county was held quite firmly for the king.

CUMBERLAND

The military history of this northern county is interesting as showing the character of border service. Nearly all lands

¹²² C. J., III, 11.

¹²³ York and Chester also made proposals of neutrality and truce, but these were quickly rejected.

¹²⁴ C. J., III, 38. On this day a report was asked for from "the Treaters."

¹²⁵ C. J., III, 57.

¹²⁶ *Gay Tracts* (Harv.), 182.25.

¹²⁷ The view of Thomas, third Lord Fairfax, in his memorials: "upon which division, different powers were set up, viz., the Commission of Array for the King and the Militia [ordinances] for the Parliament. But those of the Array so exceeded their commissions by oppressing many honest people . . . that occasioned them to take up arms in their own defense." (Memorials of Lord Thomas Fairfax, from the holograph now "Fairfax MS 36," Bodleian Library, Oxford, quoted by C. H. Firth, *Stuart Tracts*.)

were there held under border tenure, which required that lords and knights be ready for defensive service when called upon.¹²⁸ Even the Bishop of Carlisle was included in this arrangement.¹²⁹ The uncertainties regarding the precise nature of the tenure caused Parliament to attempt to define it in 1571 as consisting of readiness to serve against the Scots under direction of the lord warden of the West Marches, for which their lands were to be held without rent on payment of small fines on change of tenant.¹³⁰ Thus the usual practices of the feudal tenure were modified to suit the conditions of the frontier. Defense of their own lands, establishing a bulwark against the enemy, was considered enough except on special occasions. Numerous examples of this arrangement occur in the records.¹³¹ The same conditions existed along the Welsh frontier and were dealt with in like fashion.¹³²

Differences over the obligations and duties of the border men led to the famous *Leges Marchiarum*, which attempted to clearly define the border code. One result was the recognition of the principle that the Cumberland and Westmoreland men were immune from service outside of the boundaries of their own counties; if they defended their lands they had done enough. They asserted this precedent on various occasions when they were pressed for further military duty.¹³³ And if they did render more service they were careful to have it recorded that it was not to establish a precedent.¹³⁴ But for the most part even if the king invaded Scotland, they were only to meet the army on its march to Scotland, *a la Reretroiz sus Estayumor* and to go in the vanguard as far as *la Marche de Solewathe*, and on the return they should serve as the "reeregarde" from

¹²⁸ "On days of Marche all lords, knights, esquires and gentlemen with their tenants were to repair to the Marche bank, with the lord warden, defensibly arrayed with their best horses and nags, as time and service required." (Richard Bell MS, fol. 142 b., recited as statement of the border tenure obligation in *Vict. Co. Hist., Cumberland*, p. 326.)

¹²⁹ Writ from Edward I to Bishop of Carlisle, Dec. 12, 1299, in *Letters from Northern Registers* (Rolls Series).

¹³⁰ *State Pap., Dom., Eliz., Add. XX*, 28, 29 (*Vict. Co. Hist., Cumb.*, 326, note).

¹³¹ Discussed in *Vict. Co. Hist., Cumb.*, pp. 323 ff.

¹³² Maitland in *English Hist. Rev.*, V, 629.

¹³³ As in the reign of King John.

¹³⁴ Document from the Privy Seals, 25 Edw., I, in Pub. Rec. Office, given in *Vict. Co. Hist., Cumb.*, p. 251.

Solway to the "Rericroiz."¹³⁵ They insisted upon other significant rights of independent action harking back to the period when "Cumbria was mistress of her own destinies." Among these were the right to pay before leaving their counties if asked to serve the king, the right to be at peace or war with Scotland as they themselves thought best, and other privileges similar to those of a palatinate.¹³⁶

After the creation of the office of captain, later warden, of the West March, the problem of defense came to be more a matter of concern for the central government. A chronicler of the period refers to the existence of the captain of defense, or a king's lieutenant, as early as 1309 and 1311.¹³⁷

Commissions of Array were used frequently in the county for the raising of troops. That of 1307 was directed to John de Castre for the levy of two hundred foot soldiers . . . in the county of Cumberland.¹³⁸

Due to these conditions in part and to its geographical location, the county was nearly always ranged on the side of the reigning house. This was true in the contest between Richard II and Henry VI and also when Lancastrians faced Yorkists, even though at the later time the Yorkist forces held Carlisle.

In the Stuart period allegiance to the crown was pronounced and definite. Still there was a disinclination to pay the loan asked for in 1625.¹³⁹ But levies of troops brought ready response and trainbands were mustered and drilled and magazines filled before the actual outbreak of the war in 1642.¹⁴⁰ Sir Phillip Musgrave acted as the king's representative and colonel of the musters.¹⁴¹ Carlisle was secured and fortified and other important castles strengthened.

¹³⁵ *Vict. Co. Hist., Cumb.*, pp. 251-52.

¹³⁶ It might have become a fully developed palatinate, like some of its neighbors, and under similar conditions had it not devolved to the crown at a very early date, namely, 1120.

¹³⁷ The chronicler of Lanercost writes: *Nec potuerunt custodes quos rex Angliae posuerat in Marchia, resistere tantae multitudini Scottorum quos (Robertus de Bruce) adduxerat.* ("Chron. de Lanercost," 213, 217, in *Vict. Co. Hist., Cumb.*, pp. 254 ff. and notes.)

¹³⁸ Patent Rolls 35 Edw. I, m. 23; *Parl. Writs* I, 380 (Rec. Com. Ed.). Again in 1307, Pat. R., Edw. I, m. 32, all quoted in *Vict. Co. Hist., Cumb.*, pp. 258-59.

¹³⁹ *Hist. MSS Com., Rep. III, App.*, p. 39.

¹⁴⁰ *Hist. MSS Com., Rep. (Muncaster MSS) X, App. IV*, pp. 273-74.

¹⁴¹ Burton, "Life of Sir P. Musgrave," *Carlisle Tracts*, p. 6, in *Vict. Co. Hist., Cumb.*, p. 286.

The records show little evidence of any sympathy for the parliamentary cause. Cumberland was too far away to understand much of the principles of the constitutional struggle, while religious issues did not disturb its calm to any degree. Free from these influences, Cumberland's greatest concerns were with the problems of its own defense and the loyalty to the crown that this implied.

Cumberland remained devoted to the king, even in the midst of the defeats of the later Civil Wars. The royal cause declined after Marston Moor, with Carlisle alone faithful. However, this town surrendered after Naseby,¹⁴² but even then peace was not made with Parliament, and as late as 1648, five thousand troops were raised in Cumberland and Westmoreland for the king's service should occasion require them.¹⁴³

DERBYSHIRE

According to Glover, the earliest recorded participation of Derby in military activity was in the battle of the Standard, when the chief source of English strength was that shire. Robert Ferrers was its leader.¹⁴⁴ For this, and also because the Ferrers family, one of ancient origin and long standing in the county, had held as many as 114 manors at one time, King Stephen made Robert Earl of Derby.¹⁴⁵

By commissions the district raised large numbers of fighting men on various occasions thereafter.¹⁴⁶ Edward III, however, found difficulty in filling the assigned quota of 500 archers and 200 hobelers in February, 1333, and had to resort to impressment, which caused trouble.¹⁴⁷ Subsequently, it appears by the records, Derbyshire supplied men to various expeditions.¹⁴⁸

¹⁴² Clarendon, *Hist. of Rebellion* (Oxford, 1826) III, 185.

¹⁴³ Hist. MSS Com., Rep. (Rydal MSS) XII, App. VII, 19-20, quoted in *Vict. Co. Hist., Cumb.*, p. 290.

¹⁴⁴ See Glover, *History of Derbyshire*, I, 372-74 ff. for complete account of early Derbyshire history, military, and otherwise. Also see *Vict. Co. Hist., Derbyshire*, II, 99 ff.

¹⁴⁵ Glover, *op. cit.*, p. 95.

¹⁴⁶ June, 1308, for expedition to Scotland, Derby was asked for supplies of wheat, oats, barley-malt, bacon-hogs, and 500 men, all to be sent to Carlisle. (Pat. Rolls, 1 Edw. II, pt. 2, m. 3.) In 1309, also, *ibid.*, m. 27; in 1322, m. 21; in 1333, 7 Edw. III, pt. I, m. 24.

¹⁴⁷ Rymer, *Foedera*, II, 846.

¹⁴⁸ In 1344 (Close Rolls, 18 Edw. III, pt. 2, m. 12d) and various other occasions cited in *Vict. Co. Hist., Derbyshire*, II, 103 ff.

Men were also furnished for the Welsh service as in 1402.¹⁴⁹ Close to both frontiers, they not only fought the Welsh but also the Scots, supplying men for the latter purpose in 1403.¹⁵⁰ The men of Derbyshire are mentioned as playing an important part in the battle of Agincourt.¹⁵¹

Henry VII ordered musters of Derbyshire along with all the other counties in 1485 and named commissioners for this purpose.¹⁵² Men were drawn from the county by Henry VIII.¹⁵³

In spite of almost consistent adherence to the crown and repeated evidence of support by quotas of men and supplies, Derbyshire resisted the financial policy of Charles I in 1626.¹⁵⁴ In 1638 a muster for the Scotch wars showed the use of the terms, "trained" and "private soldiers," referring, respectively, to men supplied by the townships, the trainbands, and to men supplied by individuals of means, who, it appears, were willing to do this.¹⁵⁵

When the royal standard was raised at Nottingham in August, 1642, the response was slight according to one Derbyshire historian, who says that but thirty men marched from the county to join the king's forces.¹⁵⁶ Other accounts differ somewhat.¹⁵⁷ Clarendon refers to it thus: "Derbyshire, without any visible party for the king" was under the control of John Gell, who had fortified Derby.¹⁵⁸ Sir John Gell of Hopton was made a colonel by the Earl of Essex and became the aggressive leader of the parliamentary cause in this area.¹⁵⁹ Men were raised for the popular party in the county, though there was also a group of royalist sympathizers including the high sheriff, Sir John Harpur of Calke, the Earl of Devonshire who had been

¹⁴⁹ Rymer, *Foedera* VIII, 265, 271.

¹⁵⁰ *Ibid.*, 313.

¹⁵¹ Glover cites chronicles in proof of this, II, 106.

¹⁵² *Materials Illustrative of the Reign of Henry VII*, II, 386.

¹⁵³ *Letters and Papers Hen. VIII*, XIV, pt. 1, pp. 265-67; XIX, pt. 1., pp. 140, 178, 272.

¹⁵⁴ *State Papers, Dom., Chas. I*, Vol. 33, No. 131. (*Vict. Co. Hist., Derb.*, II, 124).

¹⁵⁵ *Vict. Co. Hist., Derb.*, II, 126. No such distinction has been met elsewhere.

¹⁵⁶ Hutton, *Derbyshire*, quoted in *Vict. Co. Hist.*, II, 126.

¹⁵⁷ Ranke says . . . "Die in Derby die Royalisten . . . hatten . . . das Uebergewicht," (*Englische Geschichte*, IX, 143).

¹⁵⁸ Clarendon, *Hist. of the Rebellion*, VI, 21, 23, 62.

¹⁵⁹ *Ibid.*

named lord lieutenant of the county, the Earl of Chesterfield, Sir John Harpur of Swarkeston, and others; these protested against Gell's action.¹⁶⁰ A conference between the two groups failed to bring results apparently.¹⁶¹ Both sides then began to recruit forces vigorously, but the parliamentary side fared better in this as it seemed to retain control of the county, over which Gell was later made governor by Essex.¹⁶² The Militia Ordinances of the Parliament had won a substantial victory in Derbyshire.¹⁶³

DEVONSHIRE

Two things stand out prominently in connection with the history of this county during the period of the Civil Wars: first, it was closely bound up with that of Cornwall, and second, the events were largely connected with the important seaport town of Barnstaple in the north. Some reference has been made to the Devonshire area in connection with the treatment of Cornwall.¹⁶⁴

Barnstaple was not only an important port, but was also a fortified town. Its record is rather checkered in the period under consideration as it changed hands no less than four times.¹⁶⁵ This gives the key to the situation in the county as a whole; both parties had a strong following. A parliamentary committee, headed by Sir George Chudleigh of Ashton, raised the local militia pursuant to the orders of the Commons and placed it under a strict Puritan, one Robert Bennet, country gentleman of Hexworthy.¹⁶⁶ Later Lord Roberts was named lord lieutenant for the county.¹⁶⁷

¹⁶⁰ Glover, *Derbyshire*, I, App. 13 (Taken from the Journals of Sir John Gell and Sir George Gresley). All quoted in *Vict. Co. Hist., Derb.*, II, 126-27.

¹⁶¹ *Vict. Co. Hist., Derb.*, II, 127.

¹⁶² A letter to the Speaker of the Commons said the parliamentarians had 700 men in the shire and control, in December, 1642. *Hist. MSS Com., Rep. IX*, 343.

¹⁶³ Portland MSS (*Hist. MSS Com., Rep. XIII*, App. pt. 1, pp. 78-79).

¹⁶⁴ See Cornwall, *supra*. Conditions were much the same in the two areas, considerable loyalty to the crown, little appreciation of the fine phrases about constitutional government, and a considerable feeling of local independence.

¹⁶⁵ It was the key to the whole surrounding area and was much sought after.

¹⁶⁶ Cotton, Richard W., *Barnstaple and the Northern Part of Devonshire during the Great Civil War* (Unwin Bros., London, 1889), pp. 57-58.

¹⁶⁷ *Ibid.*

Henry Bouchier, the Earl of Bath, went to the king at York and procured a Commission of Array for Devonshire;¹⁶⁸ pursuant to it he ordered the high sheriff, justices of the peace, and bailiffs to assemble the trainbands for the service of the king.¹⁶⁹ An appeal was made to the justices at assizes then at Exeter to have the Commissions of Array declared illegal, but Sir Robert Foster, presiding judge, was a royalist and refused so to pronounce.¹⁷⁰

The Earl of Bath was "sent for" by the Lords for his activities in the king's interests.¹⁷¹ He and his associates tried to put the Commissions of Array into effect at South Moulton, twelve miles east of Barnstaple, but Cotton declares that an eyewitness told that the attempt was attended by little success.¹⁷² Probably also the other party found little support in Derbyshire. What forces were raised or sent must have been comparatively well matched, as they seem to have alternated in control of the principal port and city, Barnstaple.

DORSET

Dorset, always called simply "Dorset" and never "Dorsetshire" according to one of its historians,¹⁷³ was another of those counties away from the rest of England, developing considerable independence of thought and action, and showing little sympathy with movements originating without. Its history during the Civil War and interregnum is made more distinctive by the preservation of two minute books of the parliamentary standing committee that sat continuously in Dorset during those years, probably the only records of their kind extant.¹⁷⁴

¹⁶⁸ *Ibid.*, p. 59.

¹⁶⁹ 13 August (Cotton, *op. cit.*, p. 62).

¹⁷⁰ *Loc. cit.*

¹⁷¹ Cobbett, *Parl. Hist.*, II, 1455.

¹⁷² Cotton, *op. cit.*, pp. 66, 67, 68, 69. An account of this incident is contained in Tract, "A Declaration made by the Earl of Bath," *Gay Tracts* (Harv.), 642. 318. C. J., II, 812, contains an account of the order of the Commons to investigate the Devonshire situation. Devon wanted to raise its own horse and pay them, so as to be able to choose its own officers. The Commons resented this.

¹⁷³ Perkins, Rev. T., "Dorset" in *The Counties of England*, by Ditchfield and others, II, 290.

¹⁷⁴ *The Minute Books of the Dorset Standing Committee*, ed. by Charles Herbert Mayo (Exeter, 1902). See Intro., vii.

This parliamentary committee was named in March, 1642, though not formally perfected until 1644.¹⁷⁵ It had complete charge of activities in Dorset, levying, directing, disbanding, and paying troops when the money was available, which was not always as the records show, and generally supervising all civil, ecclesiastical, and military activities.¹⁷⁶

But Dorset cared little for the contest between Charles and his Parliament; isolated, it had little interest in royalty or in the Commons, in Puritanism or Anglicanism. Its "rustic country folk" just wished to be let alone. An interesting organization portraying the spirit of Dorset's people was the famous band, "The Clubmen," made up of more than 5,000 rustics bent on defense of their home areas.¹⁷⁷

When the war broke out the Clubmen cared little for the merits of the issue, but they did know that quite regularly "groups of horsemen, either singing songs intermixed with oaths, or chanting psalms and quoting the Bible" marched over their lands into their villages, pillaging and trampling down crops.¹⁷⁸ Which group it was, or what they stood for, mattered not a whit to them, so the Clubmen endeavored to ward off Cavalier and Roundhead alike.

In spite of the activities of the parliamentary standing committee, Dorset apparently played little part in the contest on either side. Parliament secured control of the country; at least their supervision through their committee met with little opposition, though it probably brought little real support or aid to the popular cause. The Clubmen were later used through clever handling by Cromwell and made the greatest contribution of Dorset to the war, no doubt.¹⁷⁹

DURHAM

The possession of palatine privileges by Durham permitted the proprietors the exclusive right to raise military forces as one

¹⁷⁵ L. J., V, 632; *Minute Books*, Introd., xiii.

¹⁷⁶ *Minute Books*, pp. 7, 26, 27, 58, 83, 123.

¹⁷⁷ Descriptions of the famous Clubmen of Dorset are given in most histories of the country, or of this portion of England. See Perkins, *op. cit.*, pp. 298 ff.

¹⁷⁸ Perkins, *loc. cit.*

¹⁷⁹ Cromwell's letter to Fairfax, 4 Aug., 1645, relates to this. Referred to by Perkins, *op. cit.*, p. 299.

of the *Jura Regalia* (*Minora Regalia*).¹⁸⁰ The origin and extent of these rights have been the subject of much inquiry, but their general significance is known.¹⁸¹

The struggle of Durham as a frontier county against the Scots involved the question of the feudal obligation for military service in a border county, which was somewhat in doubt. It is referred to in Bishop Hatfield's survey as the *servitium forinsecum*.¹⁸² Service beyond the confines of the home county was vigorously opposed as not established by custom and precedent, and when the warlike Anthony Bek, Bishop of Durham and lord palatine, attempted in 1300 to compel the men to accompany him into Scotland, they deserted and went home without leave.¹⁸³ The bishop was forced to concede the point, to the further strengthening of the precedent, and agreed that service of this kind would henceforth "be at his expense" and "only in great need."¹⁸⁴

Other phases of this military service and the privileges incident to it appear in the same, or a later period. In 1295, this same Bek was made *custos* of the counties beyond the Trent with orders to compel the knights of York, Nottingham, and Derby, Northumberland and Westmoreland, Cumberland and Lancaster, together with two men from each township within these counties, to assist him as need might arise.¹⁸⁵

In 1291 he conducted an army into Scotland and again in 1300. In 1296 he was sent into Scotland as ambassador *cum plena potestate regia* to treat with John Balliol.¹⁸⁶

In 1300, *conservatores pacis* were named.¹⁸⁷ In 1311, Edward was forced to obtain permission from the bishop for

¹⁸⁰ *Registrum Palatinum Dunelmense*, Vol. I, Introd. xl-liii (Rolls).

¹⁸¹ *Victoria County History, Durham*, II, 137 ff. It is doubtful as to whether any charter of creation exists for Durham; none probably was granted. Its rights, according to M. S. Giuseppi (*A Guide to the Manuscripts in the Public Record Office*, I, 303), developed chiefly during the thirteenth century, at the end of which is found the first use of the term "Palatinus," applied to the Bishop of Durham. His rights, according to the same author, included power to raise troops and impress ships. See also Mr. G. T. Lapsley's work *The County Palatine of Durham* (Harvard Historical Studies, Vol. III), the outstanding work on that shire.

¹⁸² *Hatfield Survey*, Surtees Society Pubs.

¹⁸³ Kellaws, *Reg.*, III, 45 (Rolls); *Vict. Co. Hist., Durham*, II, 149, note.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Registrum Palatinum Dunelmense*, Introd. xl-liii (Rolls).

¹⁸⁶ *Ibid.*

¹⁸⁷ *Pat. Rolls*, 1307-13, p. 428.

the levying of one foot soldier for each villa within the franchise of Durham.¹⁸⁸ Thus did the palatine jurisdiction limit even the sovereign's right to military service in the district.

Rather tending in the opposite direction was the decree that the Statute of Winchester should be enforced within the county.¹⁸⁹ This was in 1345. In 1369 the king again named *custodes pacis* for all the counties of England with the additional duty of acting as commissioners of Array.¹⁹⁰ By a special order the Bishop of Durham was directed to do likewise for Durham.¹⁹¹

The Commission of Array was used by the bishop to raise forces within the palatinate of Durham itself.¹⁹² In the work of defense the bishop would thus supplement his feudal levies, those bound to render border service, by calling upon all able-bodied men from sixteen to sixty years of age,¹⁹³ or ask each township to supply its fixed quota,¹⁹⁴ or appoint commissioners of Array to recruit men.¹⁹⁵

Hence, during the later centuries of the mediaeval period Durham enjoyed the substantial rights of the palatine class, with influences upon the military as indicated. Coke states that the judgments of the bishops' courts were not final, as appeal lay from these to the Court of the King's Bench.¹⁹⁶ Palatine rights were substantially reduced by the Tudors, especially by Elizabeth, though the thousand-year-old episcopal palatinate was not formally dissolved, and its powers were not merged with the crown until 1836.¹⁹⁷

In the contest between king and Parliament in the Stuart period the upper, ruling class were distinctly royalist with some slight sprinkling of parliamentarians among the lower orders.¹⁹⁸ This meant that Durham was held firmly by the forces of the king.

¹⁸⁸ Letter, Edw. to Bishop of Durham, *Reg. Pal. Dun.*, p. 16. (Rolls).

¹⁸⁹ Lapsley, *The Palatinate of Durham*, pp. 178-79, gives full discussion of Durham but with little emphasis or regard for military aspects of its history.

¹⁹⁰ Rymer, *Foedera* III, pt. II, p. 863.

¹⁹¹ Lapsley, *op. cit.*, p. 179.

¹⁹² *Reg. Pal. Dun.*, IV, pp. 191, 198, 199, 262, 269; also *Rot. Fordham, ann.* 4, m. 4, *dorso*, curs. 32, all quoted by Lapsley, *op. cit.*, p. 306, who also comments: "Commissions of sort are a very common occurrence in the palatine chancery rolls" (note).

¹⁹³ As in 1322, Rymer, *Foedera*, V, pt. III, p. 964.

¹⁹⁴ Kellaws, *Reg.*, I, 17 (Rolls).

¹⁹⁵ Coke, *Institutes*, IV, C. 38.

¹⁹⁶ Lapsley, *op. cit.*, p. 306.

¹⁹⁷ 6 Will. IV, c. 19.

¹⁹⁸ *Royalist Compositions in Durham and Northumberland*, Surtees Soc.

But in spite of this unfavorable situation, the Parliament, nothing daunted as ever, gave early consideration to the state of affairs in the palatinate. A resolution of impeachment against the bishop appears on December 30, 1641.¹⁹⁹ The reference is here made to the "Bishopric of Durham" rather than to the palatinate.²⁰⁰

The cause of the Commons was not entirely submerged, in spite of the preponderance of cavalier sentiment. The lower classes seized upon the occasion to make the contest the pretext for complaints against the upper, landlord classes for social abuses, notably enclosures, and thus gave to the contest in Durham the savor of a class struggle. Tumults resulted and some riotous scenes, which were reported to the House in a letter from the justices of the peace in March, 1641, with the comment that multitudes of the people were assembled on pretense of pulling down "Inclosures."²⁰¹ There also appears a complaint against the high sheriff acting for the royalists.²⁰² A later report conveyed much the same information, and the House ordered that the justices of the peace seek out the leaders of the disorders and certify them to that body, and that, if "inclosures" are "hurting anyone, this House will adjust the matter and will take up petitions now before them against the Bishop of Durham and others for inclosures."²⁰³ However, it seems the Commons could give little relief in this matter.

Sir Henry Vane, Sr., was made lord lieutenant of "the County of Durham," as it was called in the order.²⁰⁴ In July, 1642, it was referred to, in error perhaps, as "the county palatine of Durham."²⁰⁵

In October, 1642, it was proposed to name several additional persons "to put the propositions and instructions in execution in the Bishoprick of Durham and to raise two Troops of Horse to be maintained out of Rents and Revenues of the Popists there and ill-affected clergy."²⁰⁶ This seems to indicate that even in this strong royalist area the parliamentary militia ordinances were not entirely ineffective.

¹⁹⁹ C. J., II, 363.

²⁰⁰ *Ibid.*, p. 30, in an order of exemption from a tax. The Commons seemed loath to recognize and use the term palatinate.

²⁰¹ *Ibid.*, p. 469.

²⁰² *Ibid.*

²⁰³ *Ibid.*, p. 471.

²⁰⁴ *Ibid.*, p. 424, February 10, 1642.

²⁰⁵ *Ibid.*, p. 650, in an order to the sheriff.

²⁰⁶ *Ibid.*, p. 802.

By 1644, Parliament was getting monies from sequestrations in Durham.²⁰⁷ In the same year they went so far as to demand the county palatine seal.²⁰⁸

Meantime, the royalist cause was prospering. But this side has been evidently emphasized to the neglect of parliamentary activities in the county. In November, 1642, the Earl of Newcastle had formed the counties of Northumberland, Durham, Cumberland, and Westmoreland, and the town of Newcastle into an association for the king's service.²⁰⁹ Petitions show for the most part distinct anti-parliamentary tendencies.²¹⁰ Excellent service was thus rendered to the royalist cause, and the success of the king's Commissions was probably uniform.

But the forces of the House made some headway. South Shields, the port commanding the entrance of the Tyne to Newcastle, was taken.²¹¹ But by June, 1644, the royalists were largely supreme in Durham, but they in turn were forced to give way to the Scots, who were masters of the area by 1646.²¹² After this only occasional royalist demonstrations and outbreaks occur.²¹³

Thus was Durham, affected largely by its earlier history, devoted to the sovereign and kept so, but not to the extent often represented of a complete absence of parliamentary activity. On the contrary, there was a slight movement in that behalf from the first, with a growing response to the popular movement in the shape of money and men.²¹⁴

ESSEX

Essex, a seaboard county, with its ports of Colchester, Harwich, Brightlingsea, and Maldon, was expected to supply men

²⁰⁷ C. J., III, 511-12.

²⁰⁸ *Ibid.*, p. 593.

²⁰⁹ Rushworth, *Collections*, VI, 373. Newcastle was important for its coal supply. London, however, drew its supply from Sunderland, garrisoned in the first period, as it was, by the parliamentarians, when it could not draw upon the royalist city of Newcastle.

²¹⁰ Surtees, Robert, *History of the County Palatine of Durham*. 4 Vols., London, 1816. Vol. I, Appendix, cxliii-cxliv.

²¹¹ *Vict. Co. Hist., Durham*, II, 169-71.

²¹² Prof. Terry in *Arch. Aeliana*, XXI, quoted in *Vict. Co. Hist., Durham*, II, 171.

²¹³ *Vict. Co. Hist., Durham*, quoting contemporary accounts.

²¹⁴ The account in *Vict. Co. Hist., Durham*, Vol. II, conveys the idea of complete royalist domination to too great a degree. Lapsley, the standard work on the palatinate, treats only slightly of military and naval phases, or their

for the army and ships for the navy.²¹⁵ Being close at hand, it was a ready source of supply for the military and frequently evidenced its willingness to coöperate. It furnished men for the French wars to re-enforce the garrison at Calais²¹⁶ and for service in the north.²¹⁷ When Elizabeth decided upon an expedition to the United Provinces in 1585, faithful Essex supplied 150 men.²¹⁸

With the approach of danger in 1588, it was looked to, as were all of the seacoast areas, to bear the brunt of the defense, and apparently it responded well.²¹⁹ All of these instances point to the faithfulness of the shire in its military duty to the sovereign. The crown's commissions met with ready response in the district to the north of the Thames.

But the Stuarts aroused opposition from many quarters in which nothing but loyalty had hitherto existed, and Essex was of this number. Early in the reign of James disorders broke out against his policies, and from that time on Essex bred a group of Puritan republicans.²²⁰ In 1604, it protested a certain loan attempted there.²²¹

Meantime, the musters reveal the strength of the county. In 1607, it was shown that it could put 5,280 able men in the field, 3,500 well armed, 265 pioneers, 28 demilances, and 200 horse.²²²

When attacks were feared Essex was expected to garrison the coast towns.²²³ When Colchester was asked to supply "half

influence, or of the Civil Wars, or of the seventeenth century. Chap. VIII (short) and pp. 198-99.

²¹⁵ For his invasion of France in 1346, Edward III called for 200 archers, besides foot soldiers as follows: Colchester, 20; Chelmsford, 4; Braintree, 4; Saffron (Walden), 6; Waltham Holy Cross, 4. The ports named were also to send all their ships of 30 tons upward, to Portsmouth. (Wrottesley, *Crecy and Calais*, 60, 67, 70; French Rolls, 19 Edw. III, m. 8. d. Quoted in *Vict. Co. Hist. Essex*, II, 213).

²¹⁶ *Acts of the Privy Council*, II, 514.

²¹⁷ *Ibid.*, p. 122.

²¹⁸ *S. P. Dom., Eliz.*, Addenda XXIX, 28.

²¹⁹ *Ibid.*, CCXII, 38, 55. Hist. MSS Com., Hatfield MSS, IV, 5. The latter quoted in *Vict. Co. Hist., Essex*, p. 222.

²²⁰ *S. P., Dom., Jas. I*, I, 40; II, 96.

²²¹ *Ibid.*, X, 478. Vide *Vict. Co. Hist., Essex*, pp. 222 ff.

²²² *Vict. Co. Hist., Essex*, p. 223. Complete discussions of Essex's early military activity and history are here given in detail.

²²³ In 1625 it was so ordered by the council and expected to be reimbursed for expenses incurred; since this was not done, protests were made but to no avail. (*S. P., Charles I*, V, 77; VI, 77.) In 1627, Essex was again ordered to furnish 50 men to garrison Harwich. (*S. P. Charles I*, lxx, p. 56.)

a ship" for the navy it solicited the aid of the rest of the county, but was refused.²²⁴

According to one of the historians of Essex, the Civil Wars began there, in 1627, when strong opposition was provoked by the methods used by the king to recruit a force for the aid of the ruler of Denmark.²²⁵ The first serious revolt against royal authority occurred at that time.

In spite of the prevalence of strong parliamentary sympathy, almost from the first there were active supporters of the king. Many of the oldest and most influential families there as elsewhere remained true to their sovereign. The parliamentary elections of 1640 had returned both Puritan candidates, Sir Thomas Barrington and Sir Harbottle Grimston, chiefly on account of the influence of the Earl of Warwick.²²⁶ Nevertheless, the Lucas family, Sir Benjamin Ayloffe and his son William, Sir Thomas Bendish of Steeple-Bumpstead, Sir John Tyrell, and many others of note, wealth, and influence were staunch royalists.²²⁷

Heavy demands for the northern service were made upon Essex, men were pressed, and coat-and-conduct money collected, but the shire was only lukewarm. Only the sum of £540 out of £2,400 assessed was forthcoming, and only 700 men and 60 horses were secured.²²⁸

When a war with Charles seemed imminent, the Earl of Warwick was named lord lieutenant of the county by the House of Commons.²²⁹ Later on, deputies were added.²³⁰ The sympathizers with the popular cause, of whom there were many in Essex, were first in action here as elsewhere. They mobbed the houses of the royalist supporters and created disorders.²³¹

The King issued his Commission of Array for the shire, but the Commons ordered the sheriff not to publish it.²³² Subse-

²²⁴ *Ibid.*, lix, p. 52.

²²⁵ Collier, D. W., *History of Essex*, p. 105.

²²⁶ *S. P., Dom., Chas. I*, ccclix, p. 48.

²²⁷ *Vict. Co. Hist., Essex*, p. 230. Discussion in full is here given of the various family alignments.

²²⁸ *S. P., Dom., Chas. I*, cccliv, p. 45.

²²⁹ *C. J.*, II, 424.

²³⁰ *Ibid.*, p. 483.

²³¹ A mob at Colchester sacked the house of Sir James Lucas, a royalist, put him in jail, and sent his horses to the parliamentary army under Essex. Clarendon, *Hist. of the Rebellion*, VI, 37.

²³² Rushworth, *Collections*, IV, 679. The sheriff of Essex, in a quandary at conflicting orders, personally went to London and appeared before the Commons for advice, in June, 1642. He had received the king's proclamation under

quent proclamations of the king in support of his Commissions of Array and condemning the parliamentary ordinances met a like fate.²³³ A declaration of the Commons in regard to the illegality of the King's writ went to lengths in defense of the parliamentary position.²³⁴

Warwick had gone to sea, and the deputy lieutenants were supervising the work of recruiting for Parliament.²³⁵ Later on, a committee from the Commons was sent into Essex to aid in the work.²³⁶

Meanwhile, Essex evidenced strong and violent parliamentary tendencies. Homes of royalists were plundered, and many strong petitions were sent to the Parliament.²³⁷ One group of gentlemen personally conveyed the desire of the county to coöperate in the cause to the Commons and presented a petition declaring in their enthusiasm "that there were not above 10,000 names to this petition, yet there were four score and ten thousand that were ready to set their hands unto it if they had had the time."²³⁸ Response to parliamentary recruiting also seemed to indicate enthusiasm there.²³⁹

the Great Seal proclaiming against the Militia Ordinances. The House returned him thanks, told him not to publish the king's proclamation, that it was illegal, and that "the Broad Seale was not of force to binde the subject above the votes of Both Houses of Parliament," *Eng. Hist. Tracts* (U. of M.), Vol. X.

²³³ C. J., II, 630.

²³⁴ The Parliament declared that they intended nothing but the protection and security of his majesty's person and the defense of the kingdom; that the king's writ was illegal because he could not by proclamation declare a law of Parliament void, that this writ "forbiddeth that to be done which they are obliged to do, unto, by their duty to God, their allegiance to his Majestie and the trust reposed in them by this Commonwealth" *Eng. Hist. Tracts* (U. of M.), Vol. X.

²³⁵ C. J., II, 586.

²³⁶ *Ibid.*, p. 605. Also official instructions to these members of this committee in *Eng. Hist. Tracts* (U. of M.), Vol. XII.

²³⁷ C. J., II, 387.

²³⁸ C. J., II, 629. Also "A Declaration" was sent from "many thousands of the inhabitants of Essex expressing their faithfulness to Parliament, in June, 1642. The captains and soldiers of the trainbands of Essex sent a resolution in praise of Parliament and its acts in June, 1642. That body was called "wise and gracious" and its opponents "Traytors by the Fundamental Laws of the Kingdome." They pledged themselves "to stand or fall, live or die, with you." *Eng. Hist. Tracts* (U. of M.), Vol. X.

²³⁹ Warwick reported five full companies of the trainbands. (Rushworth, *Collections*, IV, 678.) The deputy lieutenants reported to the Commons a ready response to their appeal for men "and a very considerable number of volunteers"; for this the Commons commended Essex. (C. J., II, 616, 630). Similar material indicating success in rallying men appears in *Eng. Hist. Tracts* (U. of M.), Vol. X.

The small minority of royalists tried in vain to stem the tide; they fought valiantly against the rush of devotion to the popular cause. They appointed a day for recruiting, pursuant to the King's Commission of Array. The place was to be at Brentwood, but Warwick's appearance there in person on the day set seemed to provoke such parliamentary enthusiasm that they could do nothing.²⁴⁰ They addressed a document to the King, pledging loyalty and devotion, to which the sheriff, justices of the peace, and members of the grand jury, then at Chelmsford, subscribed.²⁴¹ The justices, sympathetic with Charles, ordered the sheriff to raise the *posse comitatus* to suppress some "notorious assemblies," but the House forbade it.²⁴²

Essex was thus hopelessly dominated by the parliamentary party from the first, and the opposition had practically no opportunity to organize a party. The county joined the Eastern Association and contributed much in men, money, and supplies to the cause through the Essex committee on safety.²⁴³

GLOUCESTERSHIRE

Worcestershire, rather than Gloucestershire lying adjacent, controlled the "king's high stream of the Severn," and for that reason the importance lies with the former.²⁴⁴ Little active participation on the part of this county is to be found. The sympathies of the people, where expressed, seem to have been distinctly with the parliamentary cause and the Puritan faction.²⁴⁵ Cirencester, the chief city, was attacked by the royalists, but was stoutly and successfully defended. Later, however, Rupert took the town, but with the aid of trainbands from London the Cavaliers were expelled.²⁴⁶ It remained parliamentarian to the end for the most part.²⁴⁷

Meantime, the parliamentary Militia Ordinances were put into effect and troops raised with little difficulty; but when

²⁴⁰ *Vict. Co. Hist., Essex*, II, 232.

²⁴¹ *S. P., Dom., Chas. I.*, cccxcxi, p. 77.

²⁴² *C. J.*, II, 747.

²⁴³ *Vict. Co. Hist., Essex*, II, 233, quoting, among others *Hist. MSS Com., House of Lords*, V, 104.

²⁴⁴ See later on Worcestershire, below.

²⁴⁵ Ditchfield, P. H., "Gloucestershire" in *Counties of Eng.*, p. 343.

²⁴⁶ *Ibid.*

²⁴⁷ Ranke's conclusion (Bk. IX, 143) concerning Gloucestershire: "waltete die parlamentarische Gesinnung vor."

Lord Chandos offered the king's Commission of Array and called for a response, a mob rose, tore his carriage to pieces according to reports, and he escaped with great difficulty.²⁴⁸ Later, when another royalist, Sir Ralph Dutton, attempted to act for Charles in the shire, he incurred such personal hazard as to make it necessary for him to swim the Severn in order to escape.²⁴⁹

Such seems to be the short but effective participation of Gloucestershire in the popular cause and its clearly defined expression of opinion and sentiment in regard to the king's Commission of Array.

HAMPSHIRE

"Hants," with its valuable ports of Southampton and Portsmouth, and the adjacent Isle of Wight, was in a pitiable condition in the seventeenth century.²⁵⁰ Lack of fortifications had left these places unprotected against attacks by France, while discontent and economic unrest prevailed.²⁵¹

The Isle of Wight was held by Jerome, Earl of Portland, in 1641, and was loyal to Charles. A proposal to attempt seizure of the island was approved by the Commons, but defeated in the House of Lords.²⁵² The island remained in the hands of Cavaliers until late in the Civil Wars.

Some uncertainty exists in regard to Hampshire sentiment. A petition sent up in August, 1641, purporting to come from the grand jury of the assizes in Southampton, does not reflect very strong tendencies in behalf of either king or Parliament.²⁵³ It seemed to favor peace and a settlement of differences.

In June, 1642, the deputy lieutenants for the county reported raising 5,000 men for the Parliament.²⁵⁴ But in August of the same year, when the sheriff attempted to raise men a fight occurred between him and his forces and a group

²⁴⁸ Webb, *Memorials of the Civil War in Herefordshire*, I, 96.

²⁴⁹ *Ibid.*

²⁵⁰ Southampton and Portsmouth were used as places at which ships gathered preparatory to foreign invasion. (Wrottesley, *Crecy and Calais*, 60, 67, 70, so describes them in the reign of Edw. III.)

²⁵¹ Locke in *Victoria County History, Hampshire*, V, 336 ff.

²⁵² *Ibid.*, 337.

²⁵³ *Eng. Hist. Tracts* (U. of M.), Vol. XI.

²⁵⁴ Locke, *op. cit.*, 337; also Thomason, *Tracts* (Brit. Mus.), 669, f. 5/53, p. 98, as quoted by Locke.

of about 160 Cavaliers and loyalists.²⁵⁵ This took place near Southampton, and 15 of the king's party and 5 of the sheriff's fell. The mayor of Southampton made a speech after this engagement expressing regret but no pronounced sympathy for either party.²⁵⁶ It would appear that both factions were fairly strong, but that as usual the parliamentarians acted more promptly and vigorously. Portsmouth was first held by Lord Goring for Parliament; later on it turned to the king when it was attacked and taken by the men of Hampshire, Warwick's navy cutting off aid from the royalist Isle of Wight.²⁵⁷

The Isle of Wight and Basing House were both taken by the parliamentarians; but in 1643, when Kent, Surrey, and Sussex formed an association for the Parliament, Hampshire joined, though refusing at first, and finally evidencing no particular enthusiasm.

Hampshire, then, can scarcely be counted as a predominantly parliamentary area, one in which the royalists had no strength or in which popular sentiment was clearly for either of the participating factions.

²⁵⁵ Locke, *op. cit.*, 338.

²⁵⁶ Thomason Tracts (Brit. Mus.), E, 112; No. 18 quoted by Locke, *loc. cit.*

²⁵⁷ Locke, *loc. cit.*

CHAPTER VII

THE STUART PERIOD—III

COMMISSIONS OF ARRAY IN THE SHIRES—II

HEREFORD

THE shire of Hereford commanded the approaches to Wales and for that reason had, since the conquest at least, been carefully controlled by the crown of England, with extensive powers lodged in the person of the earl.¹ Though not under the Council of the Marches of Wales, first nominated by Edward IV,² Hereford was closely related to its affairs, and Commissions of Array for defense against the Welsh rebels often appeared in the county.³

The careful supervision exercised over the county because of its strategical location was coupled with a natural conservatism on the part of the people and its accompanying characteristic, loyalty to the crown. The new ideas of the rights of Parliament were little understood, and Puritanism never gained great headway. In a petition to Parliament in May, 1642, the county expressed approbation of that body.⁴ But the ecclesiastical issue caused the break. Attacks on the ritual of the Church of England did not meet with favor, and a tract entitled *A Declaration or Resolution of the Countie of Hereford* in response to these attacks was so bitter that the Commons sent two persons to jail in 1642 for circulating it.⁵ An unsuccessful attempt was made to locate the author.

The conservative temper of the county was due largely to the influence of the old families, not displaced in this shire as

¹ In 1067, William I named William Fitzosbern Earl of Hereford with extensive powers; in a charter of 1069 he is referred to as *comes palatii*. (Cart. de l'Abbaye de la Ste. Trinité du Mont de Rocien, in *Collections des Cart. de France*, (1840), III, 455.) Quoted in *Victoria County Hist., Hereford*, I, 354, 355.

² Pat. Rolls, 1467-77, p. 283.

³ *Ibid.*, pp. 429, 574, 605; 1467-85, p. 5.

⁴ C. J., II, 4 May, 1642.

⁵ *Ibid.*, 8, 18, 26 July, 1642; L. J., July, 1642, 8, 26. The tract is printed in Webb, *Memorials of the Civil War in Herefordshire*, I, 343-44.

was often the case elsewhere by the new commercial influences.⁶ The leader of the strong royalist faction in the Stuart period of the Civil Wars was Viscount Scudamore. The head of the small parliamentary minority group was Sir Robert Harley, a member of the Long Parliament from Herefordshire.

Lord Dacres had been named lord lieutenant of the county by the Commons.⁷ His appointment seems rather odd, as he had little to do with the shire over which he was placed in control. Later Lord Essex supplanted him.⁸ The king's Commissions of Array were issued to Sir Walter Pye of the Mynd, who was deputy lieutenant.⁹ Other commissioners were also named, and the writs carried all before them. The county militia, the trainbands, and a group of horse made up of those who held by knight's service and led by Lord Scudamore, all responded loyally to the king's commands.¹⁰ The county magazine at St. Owens Gate in the city of Hereford was seized without opposition. Later on, the marquis of Hereford came to Hereford with a more extensive Commission of Array and wider powers, making him lieutenant of all forces raised by virtue of the Commission in the counties of Devon, Cornwall, Somerset, Dorset, Hereford, and seven other counties.¹¹

But the parliamentary group was not a total failure even in the face of these overwhelming odds. Harley was active, and the party behind him, while small, was active and aggressive. Stubborn opposition to the royalist domination was made, necessitating the sending into the county of a thousand men from Worcester to aid in maintaining the shire for the king.¹² This they were able to do with comparative ease, but this domination was partly broken, at least by the latter part of 1643, when the parliamentarians gained control of a section of the county, notably the middle course of the Severn.¹³

⁶ *Vict. Co. Hist., Hereford*, pp. 397 ff. contains a full comment on the alignment of family groups.

⁷ C. J., II, 10 Feb., 1642. Cf. Webb's comments on this appointment, *op. cit.*, I, 69.

⁸ C. J., 8 Aug., 1642. This was the more natural appointment.

⁹ Webb, *op. cit.*, I, 69. *Vict. Co. Hist., Hereford*, I, 388.

¹⁰ Webb, *op. cit.*, I, 70.

¹¹ *Ibid.*, pp. 100, 101. See also Chapters IX and X.

¹² Tract—"The Latest Remarkable Truths Etc.," *Gay Tracts* (Harv.), 1642. 944.

¹³ Webb, *op. cit.*, Chaps. IX and X, treats of subsequent developments and of growth of parliamentary power.

Here, then, in a county by precedent and early usage devoted to royalty, there was a strong minority faction combating this complete domination and making it impossible to regard the shire as unanimously cavalier. This little group was so successful as to acquire control finally of a strategic part of the shire.

HERTFORDSHIRE

"Herts" is an example of a shire with divided interests and uncertain and vacillating policy in the early periods of strife between king and Parliament. Close to London, it should have been sympathetic with the cause for which that city stood. But its history had made it royalist; it was the residence of great men and cavalier families.¹⁴ The abuses of Charles's reign were protested by petitions from the county.¹⁵ Sir Arthur Capell, member from Hertfordshire in the Long Parliament, stoutly supported Pym and his associates; but later, when the Puritans became violent, he with many other Herts men took the king's side. Petitions from both sides came up to the Parliament.¹⁶ Subsequently the shire was incorporated in the Eastern Association;¹⁷ but it protested parliamentary actions repeatedly, and "its committee must have been a thorn in the side of its own leaders."¹⁸

The prevalent uncertainty is exemplified by the case of the Earl of Salisbury, lord lieutenant. He abandoned his position and joined the king. The Parliament named Lord Cranborne as his successor, but later the earl returned and fought for Parliament.¹⁹ This is probably one of the few instances of such a shifting of position. It is evident that Herts did not know the proper course to pursue.

KENT

Kent occupied a strategic position in England. Lying adjacent to the entrance toward London, it would be the first object of attack in case of a foreign invasion. On repeated occasions

¹⁴ Elizabeth's great Lord Burghley had maintained a residence at "Theobalds" in Herts, at which her majesty and later James frequently visited. Ware and Royston were seats of prominent royalist families.

¹⁵ Simkins in *Vict. Co. Hist.*, Herts, II, 27 ff.

¹⁶ *Ibid.*, pp. 29-30.

¹⁷ Kingston, *East Anglia and the Civil War*, quoted by Simkins, *op. cit.*, p. 27, note 4.

¹⁸ Simkins, *op. cit.*, p. 31.

¹⁹ *Ibid.*

in its early history it had been called upon to prepare for defense,²⁰ and it appears that Kent responded in a very satisfactory manner.²¹ Marked activity was shown in resisting the Armada.²² After this the military spirit subsided, though a reference in 1631 comments that Charles on a visit observed "with content" the trainbands drilling there.²³

In 1639, the king sent Commissions of Muster for the trainbands in order to use them in the north.²⁴ Later, the lord lieutenant was ordered to pick a thousand of "ye most able of the 1200 in the bands, two-thirds musketeers and one-third pikemen, for the Scottish service."²⁵

When the contest between Charles and the Parliament opened, Kent seemed to have manifested distinctly parliamentary and Puritan sympathies.²⁶ Many petitions were sent to the King and the Commons favoring these points of view.²⁷ In the "Battle of the Tracts," preceding the conflict, Kent seems to have played an important part; the *Bibliotheca Cantiana* recites a list of seventy-seven titles from this shire alone, all indicating adherence to the popular cause.²⁸

²⁰ Kent activities are recounted at length in Col. J. Bonhote's *Historical Records of the West Kent Militia*. London, 1909.

²¹ *Ibid.* Kentish men achieved some distinction as fighters.

²² Bonhote, *op. cit.* p. 43.

²³ *Archaeologia Cantiana* (J. R. Smith, pub., London, 1837), VI. 61.

²⁴ *State Papers, Dom., Charles I*, cccxvi; ccccxiii, 3.

²⁵ *Ibid.*, cccxcvi, 133, and cccxiv, 132-33. For full account of the activities of the Kentish troops in 1639-42, *vide* Bonhote, *op. cit.*, pp. 45 ff.

²⁶ Most of the historians so conclude, Bonhote and Furley among others.

²⁷ *Bib. Cant.*, pp. 28 ff. See following note.

²⁸ Some of the titles are brief and give little information:

1641, Petition to the House of Lords

1642 (Feb.), Petition of Northampton and Kent

1642 (Aug.), Petition to the King

1642, Petition to the Lords and Commons

1642 (30 Aug.), Petition to the Lords and Commons

One petition was suppressed or concealed by two royalist sympathizers, the Earl of Bristol and Judge Mallet; for this they were imprisoned in the Tower upon discovery. Many other petitions are recited (*Ibid.*, pp. 23 ff.), some of the titles of which indicate their nature:

No. 5. A Relation of the Seizing of the House of one Master William Barnes, a Cavalier. (London, 1642.)

No. 6. Exceeding Joyful Newes from Dover Castle, How a Nobleman sent from the King to demand the Castle was Repulsed. (London, 1642.)

No. 7. A True Relation of the Brave Exploit of Captain Richard Dawks in Taking the Castle of Dover. (London, 1642.)

No. 9. True Relation of the Parliamentary Forces . . . Taking the town of Tunbridge. (London, 1643.)

No. 15. Kentish Conspiracy, an Order and Narrative of the Plot

When hostilities approached, Sir John Sackville and Sir Nicholas Crisp endeavored to put the king's Commissions of Array into effect in the county, but met with vigorous opposition and were prevented from doing so by the supporters of the parliamentarians.²⁹

Parliament passed the Militia Ordinance and named Robert, Earl of Leicester, as lord lieutenant.³⁰ It appears that the county submitted to the parliamentary orders for enlistments; the gentry, in the minority, favored his majesty's Commission of Array, but the freeholders and yeomen were generally on the other side and as "oft as they [the Cavaliers] attempted to show themselves, they were crushed and their endeavours defeated."³¹ The leaders were then Sir Christopher Digges for the anti-royalists and Sir John Colepepper for the king.³²

In an engagement for the control of Tunbridge in 1643, the parliamentarians won a decisive victory and controlled the county until 1647 or 1648.²³ In these years, the arbitrary action of Parliament led to the Kentish rising of 1648.³⁴

The facts seem to indicate that the king's Commissions of Array produced few results in Kent; the shire supported the theory that the outcome of the contest between the king's Commissions and the Militia Ordinances would determine on which side that area would be ranged in the succeeding contest. One piece of evidence seems to indicate that in Kent the Commissions of Array were attempted as late as 1645; if this is true it offers the latest example of such a use yet found.³⁵

for the Surprising of Dover Castle and Setting on Foot of a late Commission of Array. (London, Jan., 1645.) A late date for attempting to use the Commission of Array, if correct.

²⁹ Rushworth, *Collections*, V, 686.

³⁰ Bonhote, *op. cit.*, pp. 45-55. Hasted (*History and Topographical Survey of the County of Kent*, 12 Vols., Canterbury, 1797) recites that kings in ancient times appointed persons of prominence to be their lieutenants in different counties in case of domestic troubles or risings and cites references (I, 231). He says that these temporary lieutenants gave way to the more permanent ones of Henry VIII. Hasted thus explains the origin of the office of lord lieutenant differently from Miss Thomson in *Lords Lieutenants in the Sixteenth Century*.

³¹ Rushworth, *Collections*, V, 680.

³² Furley, Robert, *History of the Weald of Kent*, p. 527.

³³ Bonhote, *op. cit.*, p. 56.

³⁴ Discussed at length by Col. George Colomb, F.S.A., in "The Royalist Rising in Kent, A.D. 1648" in *Archaeologia Cantiana*, X, 33. Also *vide*, Bonhote, *op. cit.*, p. 56 ff.

³⁵ See note 28, No. 15, *supra*.

LANCASHIRE

Viewed as a series of local wars, which in truth they were, the Civil Wars of the Stuart period may very well be studied in miniature in the county of Lancaster.

Geographical conditions tended to separate it from the rest of England;³⁶ the contest, therefore, was determined in this district, and in its earlier phases by local troops and upon local issues. All of the factors were present. The shire was divided between the parliamentary influences of the cities of Manchester and Bolton in the south and east and the strong cavalier sympathies of nearly all the rest of the county under the leadership of James, Lord Strange, shortly to become the seventh Earl of Derby. He was a direct descendant, through his grandmother Margaret Brandon, of "Old John of Gaunt, time-honoured Lancaster." So firm was the hold of the earl upon the majority that it might be questioned whether he possessed "more truly than either King or Parliament, the allegiance of one-half of Lancashire."³⁷

Historically, Lancashire had had a long and noble past. The county of Lancaster was erected into a palatinate by Edward III in 1351. In that year he made Henry, Earl of Lancaster, the Duke of Lancaster for the term of his life and clothed him with palatinate rights; on his death in 1361, the palatinate was extinguished for almost sixteen years. It was revived in 1377 and conferred upon John of Gaunt.³⁸ It had possessed strategical importance for centuries because it had early been used as the king's base of operations against Ireland and to some extent against Wales. Liverpool owes its foundation to the desire of King John to have a distributing point

³⁶ On the west is the coast; along the east run in almost continuous ranges hills of considerable size, part of the Pennines broken only midway by the Ribble valley. By this pass Rupert marched into Lancashire in 1644, and through it Cromwell and his army came in pursuit of the Scots in 1648. The Mersey courses along most of the southern boundary, while the northern slopes off in a westerly direction almost to the sea. Such were the features which tended to make the shire a section by itself. The only outside contacts were those definitely associated with the sovereign, until the newer industrial activities penetrated, affecting only Manchester and Bolton. The rest of the county remained largely unaffected. For full discussion of the geographical factors as well as a very complete and detailed treatment of the part played by the county in the wars, see Broxap, *The Great Civil War in Lancaster*.

³⁷ The opinion of Trevelyan in *England Under the Stuarts*, p. 228.

³⁸ Giuseppi, *Guide to Materials in the Public Record Office*, p. 311.

advantageously located on the estuary of the Mersey to aid in the transportation of supplies to Ireland and through Chester to Wales.³⁹

Political, religious, and social influences contributed to make the war in this area. The contest between the conservative areas of the north and west and the progressive sections of Manchester and Bolton, the latter imbued with the newer ideas of parliamentary government, the former definitely allied through centuries with king and the old religion, reflects the conflict over these issues in the nation at large. A great portion of the population was Roman Catholic.⁴⁰ Many of the rest were in sympathy with the king's Anglican policy, and the small parliamentarian area included all the Puritan sentiment there was.⁴¹ Later on Presbyterianism gained rapidly. Social phases of the conflict appear in the opposition to the great house of Stanley. Lesser gentry saw an opportunity to profit by the possible disruption of this powerful faction. Industrial phases are reflected in the influences of the centers of activity, Manchester and Bolton, while the agricultural areas were naturally conservative.

The same conditions that defeated the king's cause in Lancashire worsted it in the country as a whole. The Cavaliers lacked suitable objectives, wasted their efforts in trying to hold widely divergent and unimportant centers, and lacked a popular appeal to the country in a war fought between two minorities, each striving for the support of the nation. Finally, here as elsewhere, the popular leaders were much more efficient; Derby, though brave, was not an able commander, while Assheton, Shuttleworth, Moore, and Rigby were far more

³⁹ Lancashire Pipe Rolls, 220, 228, 234, 239, 243. Quoted in *Vict. Co. Hist., Lanc.*, II, 192. Lancashire was made a county palatine in 1351 and became an *Imperium in imperio*. This had been followed by grants of *juria regalia*, which were constantly increased down to the revival by Henry VIII of Edward's Council of the North. By this an effort was made to place a "yoke upon the proud and stubborn neck of the northers." This caused restlessness and resistance, which may have contributed to the Lancashire opposition in the Civil Wars. (*Vict. Co. Hist., Lanc.*, II, 205 ff. See also *Eng. Hist. Rev.*, X, 37, for account of early grants of rights to the earls of Lancaster.)

⁴⁰ The Lancashire recusants were barred at first, but were very soon admitted to the royalist ranks. They had offered to take up arms for Charles; William Blundell of Crosby was the leader of a group of these. *A Cavalier's Note Book*, William Blundell of Crosby, ed. by Rev. T. E. Gibson. London, 1880.

⁴¹ Broxap, *op. cit.*, pp. 3-4.

capable. The Earl of Derby was the lord lieutenant and by his arbitrary acts aroused resentment.⁴² When Derby joined the king, Lord Wharton was named lord lieutenant in his stead.⁴³ The king refused approval of this action at first, but the Commons named him independently in March, 1642.⁴⁴

Various petitions came in from Lancashire expressing contrary views on the impending conflict. The Militia Ordinances were passed by the Parliament, March 5, 1642, and the orders were sent up to Lancashire for enforcement, together with orders forbidding the enlisting of men under any other orders.⁴⁵

The king's Commission of Array was sent to a group headed by Lord Strange, as he then was, who promptly ordered musters held in three different places.⁴⁶ The response was enthusiastic, and there were approximately 20,000 men recruited by him for the king's service.⁴⁷ This very fact raised jealousy against Strange and led to efforts by his enemies at the king's court to attack him.

Meantime, declarations followed each other in regard to the situation in the shire. Petitions came to the Commons representative of both sides; each side, Charles from York and the Houses from London, condemned the acts of the other and ordered non-compliance to the demands of the other.⁴⁸

⁴² The frequent raising of troops and money in the county, while the country swarmed with Roman Catholics, adherents of James Stanley, Lord Strange, later Earl of Derby, roused a feeling in the more progressive districts. These latter controlled the parliamentary delegation, and most of the Lancashire representatives were anti-royalist. (*Vic. Co. Hist., Lanc., II, 432 ff.*) *Vide* also C. J., II, 476.

⁴³ C. J., II, 426. Also see Parl. Ord. in Rushworth, *Collections*, Vol. I, pt. III, p. 526. See also Ormerod, *Tracts of Lanc.*, pp. 2 ff, Camden Society. For an illuminating discussion of the "martyr Earl" see Broxap's *Civil War in Lanc.*, pp. 25 ff.; *Dict. of Natl. Biog.*; the life of Canon Raines in the *Stanley Papers*, Camden Soc., No. 66; also Seacome's *House of Stanley*. The wife of the earl played an important part in his career. She was French, the daughter of Claude de la Tremoille, Duc de Thouars. It was through her that attempts to secure the mediation of the States General were made. See Hist. MSS Com., Rep. X, "Bouverie MSS," p. 91.

⁴⁴ C. J., II, 495.

⁴⁵ *Ibid.*

⁴⁶ Ormerod, *op. cit.*, pp. 7-8. Cf. Ranke, IX, 143 . . . "(in) Lancashire und Cheshire musterte Lord Stanley an drei verschiedenen Plätzen Schaaren, von 20,000 Mann."

⁴⁷ Ranke, *op. cit.*, IX, 143.

⁴⁸ See Ormerod, *Civil War Tracts in Lancashire*, Camden Soc., II, 2 ff. and 8 ff. for petitions, declarations, etc. Also *vide* C. J., II, 476. A committee accompanied one of the parliamentary petitions to London. The recusants sent appeals to the king and this came to the attention of the House (C. J. II, 846). A letter from "well-affected people" in Lancashire came at the same time.

But the recruiting went on; the large following of Stanley, including his tenants and dependents, possibly one-half of the county, answered the king's summons, more perhaps from loyalty to the earl than to Charles.

The Commons sent a committee down to Lancashire to aid in enforcing the ordinances.⁴⁹ This committee reported on July 16.⁵⁰ The parliamentary centers of Manchester and Bolton were aiding the cause despite the strong cavalier sentiment elsewhere.

On July 15 the first bloodshed occurred between these rival groups, each intense, armed, and fairly strong; the remarkable thing was that this had not resulted earlier.⁵¹ Lord Strange had called a meeting, among others, at the Fulwood Moor near Preston, for the purpose of reading one of the king's latest proclamations. Whether the meeting was unanimously for the king is in dispute, but some parliamentary supporters there started a cry for the Parliament.⁵² At this both parties rushed for the magazines, one at Preston, the other at Manchester, and for the powder at Liverpool. Both got some of the supplies at the first-named place, the royalists secured the powder at Liverpool, while a siege was to be waged against the Roundheads, who were endeavoring to defend Manchester and its contents.⁵³ On July 15 Lord Strange marched toward the city and attempted to enter it with his followers. A clash with loss of life resulted.⁵⁴ The siege followed.

LEICESTERSHIRE

In Leicester "der vom Parlament aufgestellte Earl Stamford mit dem vom König eingesetzten Sheriff Henry Hastings, Sohn der Grafen von Huntingdon."⁵⁵ So runs the account of a keen historian of the period. But back of this contest is the

⁴⁹ C. J., II, 615; L. J., V, 129.

⁵⁰ C. J., II, 676. Also *vide* p. 641, a report on the workings of the Commissions of Array in Lancashire.

⁵¹ This was partially due to geographical influences. Each party had restricted itself to a separate area, the parliamentarians to the hundred of Salford around Manchester, Bolton, and the hundred of Blackburn; the royalists were confined to the northern four hundreds.

⁵² Ormerod, *op. cit.*, gives details and points in dispute.

⁵³ *Ibid.* Also *vide* C. J., II, 692-93.

⁵⁴ For siege and details *vide* Broxap, *op. cit.*, Chapter III.

⁵⁵ Ranke, IX, 143.

story of an animosity that aided in making "Old Leicestershire" the scene of the bitterest local feud incident to the outbreak of the Civil Wars. In no other place were the operations of the rival military summonses, the king's Commissions of Array and the parliamentary Militia Ordinances, better illustrated than in the district about Leicester. For these reasons and because in some ways the Civil War originated in Leicestershire, a survey of the situation is at once interesting and essential.

The conflict was colored by the dominant personalities of a number of outstanding figures, whose characters, traits, beliefs, friendships, and personal animosities determined the course of Leicester in the Civil Wars.

Sir Arthur Haselrig was one of the five members whose attempted arrest had precipitated the conflict.⁵⁶ He had been a leader of the parliamentary opposition for some time.⁵⁷

The Earl of Stamford, who served as lord lieutenant for the parliamentary cause, was "of the school of Essex and Manchester, who entered the war to check, not to overthrow, monarchy."⁵⁸ His son Thomas, Lord Gray of Scroby, was one of the younger bloods whose hot-headedness served to make the contest intense and bitter. He was the avowed opponent of Henry Hastings, and Clarendon recounts the personal feud as the chief reason for the bitterness of the struggle in Leicestershire. Gray later became Lord of the Midland Association. He was rather erratic and radical, a fanatic in religion and an extremist in politics; he aided Cromwell, assisted Colonel Pride in his coup, signed the King's death warrant, and probably escaped execution as a regicide by his death in 1657.⁵⁹

Henry Hastings, the second son of the fifth Earl of Huntington, high sheriff of the county, was the young and aggressive upholder of the royal cause. An owner of the extensive mining interests about Leicester, he had men from these works to draw upon. He was a leader of one faction as Lord Gray of Scroby was of the other. Hastings was a "royalist of the first water," hero or villain as you choose of the Leicestershire plot, the course of which largely determined the results of the great

⁵⁶ Hesilrige or Hazlerigg. Rushworth's *Collections*, IV, 473-77; also C. J., II, 372; and L. J., IV, 501.

⁵⁷ Dryden, *Memorials of Old Leicestershire* (London, 1911), p. 201.

⁵⁸ *Ibid.*, p. 202.

⁵⁹ *Ibid.*, p. 203.

conflict outside.⁶⁰ While the following may be an extreme statement, its very emphasis tends to counterbalance the common disregard of the influence of local situations on the Civil Wars in England. Miss Alice Dryden writes of Hastings: "It is not too much to say that but for him the whole course of the war would have been changed and the Battles of Marston Moor and Naseby might never have been fought."⁶¹

Theophilus Hastings, elder brother of Henry, was at first on the parliamentary side, but soon after the outbreak of the war at his father's death he became the Earl of Huntington and largely withdrew from the contest. Thus did the feud between the Grays and Hastings quicken the contest in Leicestershire and influence the whole course of the Stuart period.

Petitions had been sent in from Leicestershire, giving evidence of sympathy for both sides.⁶² As time went on these petitions increased and reflected strongly divided sentiments, "expressing zeal and loyalty to his Majesty" and "unchangeable constancie to maintain the Proceedings of Parliament against all opposition."⁶³ Others attempted a halfway course, asking the king "to draw neere in Person to his Parliament," and that "you will freely consent to put our country (because we are in such eminent danger, Southward and Northward, having neither Castles or any other places of strength by Sea or Land or approved friends besides the Parliament) in a posture of defense and that you would recall your warrants prohibiting our Trained Bands to muster; the rather because we desire to follow the good example of our neighbor countrymen of Lincolnshire and others."⁶⁴ Other petitions urged recall of the Commissions of Array as a condition precedent to peace.⁶⁵

The Earl of Stamford was named lord lieutenant of the county by the Commons in February, 1642.⁶⁶ Later a committee was appointed to assist him.⁶⁷ The parliamentary Militia Ordinances had been passed in the meantime.

⁶⁰ *Ibid.*, p. 204.

⁶¹ *Ibid.*

⁶² C. J., II, 21, 43, 44; also *Eng. Hist. Tracts* (U. of M.), Vol. XI.

⁶³ *Eng. Hist. Tracts* (U. of M.), Vol. XI.

⁶⁴ *Eng. Hist. Tracts* (U. of M.), Vol. X (May-June, 1642).

⁶⁵ *Ibid.*, Vol. II (July, 1642).

⁶⁶ "A Petition from the Towne and County of Leicestershire" in *Gay Tracts* (Harv.), 1642. 1311.

⁶⁷ C. J., II, 425.

⁶⁷ *Ibid.*, II, 604.

The king's first Commission of Array in the Civil Wars in England was issued from York, June 11, 1642,⁶⁸ being directed to the earls of Huntington and Devonshire, and divers gentlemen, and also to Henry Hastings, high sheriff of Leicestershire. The latter was to be the chief supporter of the king's rights in the county. This commission directed that, because of "prevalent dangers," a "Popish discontented party at home," and attempts of a small minority to call out the militia against our wishes and orders," the men of the county be summoned for his majesty's service at appointed times and places.⁶⁹ The king's letter accompanying the Commission of Array and the proclamation to be read at the time of its promulgation recited the same things and offered arguments in support of the king's right so to act.⁷⁰

Immediately the Parliament declared the king's Commission of Array illegal.⁷¹ The Lords and Commons also appointed a joint committee to consider preventing the Commission of Array from going into effect in Leicestershire.⁷² From this time on (June 17) there was a permanent committee on Commissions of Array in the Parliament.

In the absence of Henry Hastings, who was at York at the time, the king's messenger had delivered his copy to one Archibald Palmer, the undersheriff, who had obeyed by issuing an order requiring the high constables to summon the trainbands, pursuant to the Commission of Array.⁷³

Meantime, on Saturday, June 4, the Earl of Stamford, lord lieutenant, had arrived in Leicester and issued warrants to the same head constables to summon the trainbands and volunteers to appear before him at the town of Leicester on Wednesday, June 8, and at five other places in the county on

⁶⁸ Rushworth, *Collections*, IV, 655, 669; Gardiner, *Const. Doc. of Pur. Rev.*, pp. 178-81. *Eng. Hist. Tracts* (U. of M.), Vol. XI, has a copy of the king's Commission of Array and the Proclamation in regard to same, the king's letter accompanying the Commission of Array and the Declaration of Parliament in regard to same. (See Appendix later.)

⁶⁹ *Eng. Hist. Tracts* (U. of M.), Vol. XI.

⁷⁰ *Ibid.* and C. J., II, 641. Legality was claimed chiefly because of statute 5 Henry IV.

⁷¹ C. J., II, 641.

⁷² *Ibid.*, pp. 631-32.

⁷³ *Ibid.* This was recited in the report to the Commons, whereupon, as stated, the House declared the Commission of Array illegal, and ordered that Henry Hastings "be sent for as a delinquent."

other specified days.⁷⁴ At the same time a messenger arrived from York, ordering the sheriff to publish the king's proclamation against the execution of the parliamentary ordinances.

The lord mayor of Leicester was partial to the king, and at the suggestion of other royalist sympathizers attempted to set a guard about the magazine at Leicester. But the Earl of Stamford had acted first, having already removed the stores first to a strong tower at Newark's Gate and later to his own house.

On June 11, the king's Commission of Array arrived and on June 15, Hastings appeared in person, armed with a like writ, and took charge of the royalist interests in a vigorous and aggressive fashion. He first directed that the constables be instructed to call the men of the county together on Wednesday, June 22.⁷⁵

On Monday, June 20, the Earl of Stamford, fearing attack, set a guard about his house, consisting of 152 of his neighbors, tenants, and servants.

On Tuesday, June 21, a messenger from the Parliament arrived, with warrants for the arrest of the undersheriff for publishing the king's Commission of Array, and, assisted by a guard, seized him and carried him off to Westminster.

Meantime, ready responses to the parliamentary appeals for men had been made in Leicester from Broughton-Ashley, Kibworth, Melton-Mowbray, Ruinborough, and Coptoake.⁷⁶

⁷⁴ These facts and those that follow are from the following sources: Rushworth, *Collections*, IV, 669 ff.; C. J., II, 631, 632, 641-49, and *passim*. Reports of affairs made to the House of Commons: Cobbett's *Parl. Hist.*, II, 1406 ff.; Gardiner, *op. cit.*, X, 205 ff.; *Eng. Hist. Tracts* (U. of M.), Vol. X (May-June, 1642).

⁷⁵ A letter was sent by Sir Arthur Haselrig to the Commons reporting the state of affairs there, together with a copy of the order of the king to Henry Hastings and others and the order of Hastings to the people to appear for the king's service (C. J., II, 630-31).

⁷⁶ The report to the Commons indicated considerable response to these assemblies; at Leicester, "there appeared both Trained Soldiers, private men and Volunteers faire beyond expectation, who generally declared themselves for the King and Parliament"; at Broughton-Ashley, about a Hundred Volunteers and the Trained and private men; all save one division at Kibworth "where there was a very good appearance, except some clergy"; at Melton-Mowbray "where they made a generall appearance"; at Ruinborough "where the appearance was very good, considering how many Popists and ill-affected people live there about"; at Coptoake "where there was a generall appearance of the Trained and private men with 200 Volunteers at the least". "A Narration, etc." by one John Chambers and James Stanforth in *Eng. Hist. Tracts* (U. of M.), Vol. XI.

Mr. Hastings then departed for Loughborough, but returned a few days later with about a hundred armed miners from his collieries. These with horses, carriages, pikes, muskets, and calivers, beating drums, marched toward the town of Leicester. Three miles out from the city, powder, matches, and bullets had been distributed and the musketeers were ordered to charge with powder and ball and march with matches lighted. But the Earl of Stamford had been forewarned of the approach and had drawn up just outside of Leicester with a body of 150 musketeers and 20 good horse "well mounted with Carabines and pistols."

Only a slight clash of arms resulted. Hastings stopped his men on seeing Stamford's array drawn up in the fields. He ordered the reading of the king's Commission of Array. Near by the parliamentary ordinances were also proclaimed. A slight skirmish only occurred when several members of the earl's force rushed in and tried to seize Hastings and a few of his followers. Blows were struck, but Hastings jumped upon his horse and with most of his men escaped; the rest dwindled away but the earl captured a quantity of their weapons, "one great saddle, three Petrossels, about one hundred Pikes, one Launce, about sixty Musquets and Calievers, about twenty swords and four long pieces about seven foot in length."⁷⁷ Thus ended the first "battle" of the Civil Wars in England, "fought" Wednesday, June 26 in Leicestershire, with the enforcement of the king's Commissions of Array or the parliamentary Militia Ordinances as the chief issue.

Meanwhile, great excitement was aroused over the reports of the clash. The Commons asked for and received a complete report of the affair; they summoned and examined eyewitnesses who reported facts substantially as outlined above.⁷⁸ Mr. Henry Hastings was ordered "sent for as a delinquent."⁷⁹ A committee was named to draw up impeachments against him and "those other gentlemen in Leicestershire who are obstructing the Parliamentary ordinances."⁸⁰

On June 18, Mr. Serjeant Wilde, reporting for a committee of Lords and Commons, said that they had considered

⁷⁷ Rushworth, *op. cit.*, IV, 670. ⁷⁹ *Ibid.*, pp. 631-32. The Lords concurred.

⁷⁸ C. J., II, 641.

⁸⁰ *Ibid.*, p. 645.

the Commission of Array sent by the king into Leicestershire and were unanimous in the opinion that "it is against the Law and Liberty and Property of the Subject," and a committee of three was named to draw up a declaration of illegality for publication.⁸¹ This was done, and all were warned not to obey or assist in the enforcement of the king's orders.⁸²

Thus the first contest over the Commission of Array and the parliamentary ordinances ended in the failure of the former. It is very possible that the outcome of this early clash in Leicestershire went a long way toward determining the future course of the Civil Wars in England.

Hastings was later made Lord Loughborough, in October, 1643, and fortified Ashby-de-le-Zouch, thus holding it for the king. By 1643, the Parliament held Leicestershire with outposts at Lady Manners' house, at Bagworth, Leicester Abbey, and the mansion of Sir Erasmus de la Fountaine at Kirby Bellars. The King's party held Ashby-de-la-Zouch, Newark, Belvoir Castle, Stamford, and Burley House.

LINCOLN

Lincoln closely bordered York, the county where the king had his headquarters, and was well up in an area supposedly royalist in sympathy, but the parliamentary party was quite strong, nevertheless. The Earl of Lincoln was originally named lord lieutenant of the county in February, 1642;⁸³ he declined the position and Lord Willoughby of Parham was named in his place,⁸⁴ and accepted the appointment.⁸⁵

When Charles passed through Lincoln into York he took 500 arms from the county, and the Commons in April ordered that they be returned to the magazine of Hull.⁸⁶

Instructions were sent to Lord Willoughby and the rest of the committee as to mustering;⁸⁷ the lord lieutenant reported that the trainbands were in good shape.⁸⁸

The king, upon hearing of Lord Willoughby's nomination to the office, ordered him not to put the Militia Ordinance into

⁸¹ *Ibid.*, p. 632. Again the Lords concurred.

⁸² Cobbett, *Parl. Hist.*, II, 1382, 1405.

⁸³ C. J., II, 424, 497.

⁸⁴ Rushworth, *Collections*, IV, 675.

⁸⁷ *Eng. Hist. Tracts* (U. of M.), Vol. XII.

⁸⁴ *Ibid.*, p. 497.

⁸⁶ C. J., II, 536.

⁸⁸ Rushworth, *loc. cit.*

operation; but the lord replied to King Charles evidencing his intention to do so.⁸⁹

The king's Commission of Array for Lincolnshire had meantime been granted to the Earl of Lindsey, a veteran of the Dutch Wars whom Charles had made commander-in-chief; to the Earl of Newcastle, Viscount Newark, Sir Frances Fane, and others, among them one Captain Booth already an officer of a trainband there.⁹⁰

Lord Willoughby had ordered a review of the militia at Caistor in June, 1642. When the militia assembled, Captain Booth, now acting for the king, appeared before them and, claiming to be captain of the company and commissioned by the king, attempted to read the king's Commission of Array and proclamation.⁹¹ He was arrested by Captain Wray, a member of the parliamentary committee for Lincolnshire,⁹² who was acting under Lord Willoughby.

According to Booth's petition subsequently sent, he was arrested and disarmed in front of his own soldiers, much to his disgrace;⁹¹ he also reported that Captain Wray termed the king's proclamation a "seditious pamphlet" and added that "they came thither neither to dispute the law nor to be taught the laws, nor did value the law but must observe the order of the House."⁹⁴

The king answered Booth's petition, through one Captain Edw. Nicholas acting under his direction, from York.⁹⁵ Boothe was subsequently released,⁹⁶ and mustering of the trainbands continued with some degree of success.⁹⁷

⁸⁹ *Ibid.*, IV, 676-77. The king ordered Parham to desist under penalty. Parham replied that it gave him great unhappiness not to be able to obey the king's commands, "but I am now come into this county to settle the militia according to the Ordinance of Parliament, which, by the votes of my Lord Littleton and others in the House of Peers (better versed in the laws than myself) passed as a Legall thing and hath since been confirmed—by his example and your Majesties Chief Justice, Sir John Banks," "Letters of Lord Willoughby," *Eng. Hist. Tracts* (U. of M.), Vol. X.

⁹⁰ Vellacott, G. H., in *Vict. Co. Hist., Lincolnshire*, II. *Vide also Eng. Hist. Tracts* (U. of M.), Vol. X.

⁹¹ Account in *Eng. Hist. Tracts* (U. of M.), Vol. X, which is a reprint of Captain Booth's report of the affair to the king in the shape of a petition for redress.

⁹² C. J., II, 544, 585.

⁹³ Petition of Captain Wm. Booth in *Eng. Hist. Tracts* (U. of M.), Vol. X.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ So reputed in letters to the Commons in *Eng. Hist. Tracts*, *loc. cit.*

After failing at Hull, the king went into Lincoln, where he encouraged resistance to the parliamentary Militia Ordinances and many joined him.⁹⁸ In one dispatch of July 20, 1642, mention is made of four hundred horsemen raised and equipped in Lincoln for the king's service.⁹⁹ The Commons named a committee to check royal activities in Lincoln.¹⁰⁰

The shire remained active on both sides for some time after the opening of the war. Lincoln, supposedly royalist, showed quite distinct and active parliamentary tendencies.

MIDDLESEX

Middlesex, close to London, the scene of Hampton Court and frequent visitations of royalty, has little of interest or importance in its history at the opening of the Civil Wars in England. Its policies were largely shaped by London, in whose shadow it lay. When the metropolis fought Henry III, Middlesex followed; when Simon de Montfort drew the capital to his side, he likewise received aid from the neighboring shire.¹⁰¹ In the feudal strife of the late Lancastrian period, London's support of the White Rose was seconded by the County of Middlesex.¹⁰² Hampton Court saw much of the Tudors. In the Stuart period protests against the methods of Charles appear.¹⁰³

With the outbreak of hostilities, Middlesex was predominantly parliamentarian and turned out its recruits to drill with those from Essex on Turnham Green. Yet there was royalist sympathy even in this area, and many of its gentry followed the king to Oxford.¹⁰⁴ After this, the county was controlled by Parliament without effort and served as a training ground.

NORFOLK

Norfolk, in the northern part of the area later to be included in the Eastern Association, had its contest between sup-

⁹⁸ Vellacott, C. H., *Vict. Co. Hist., Lincolnshire*, II, 281.

⁹⁹ Sir Nicholas to Sir Thomas Kae in *State Papers, Dom., Chas. I.*, 1641-43, p. 359.

¹⁰⁰ C. J., II, 589, 590.

¹⁰¹ Mellor, J. V., in *Vict. Co. Hist., Middlesex*, II, 20-21.

¹⁰² *Ibid.*, p. 26.

¹⁰³ *Ibid.*, p. 37.

¹⁰⁴ *Ibid.*, p. 40. Mellor lists the names of those who joined the king.

porters of king and Parliament. James was closely allied with the powerful Howard family and in 1606 had named Henry Howard as lord lieutenant.¹⁰⁵ Charles I followed this precedent and kept the family in power. The Norfolk members of the Commons, however, departed from the royalist tradition established by that great house, and some of them, so it is said, assisted in holding the speaker in his chair while the famous resolutions of protest against tonnage and poundage were passed.¹⁰⁶

In 1640, when the Commissions of Array were sent down to the shire by the king, they were denounced by the representatives in the Commons.¹⁰⁷ One Sir Robert de Grey had first been named by the king to attempt enforcement, but later Captain Moses Treswell acted, and in July, 1642, he was seized by parliamentarians and imprisoned in London.¹⁰⁸

Norfolk was predominantly for the popular cause and later joined the Eastern Association, yet its historian records that there was royalist activity at several places in the country.¹⁰⁹

NOTTINGHAMSHIRE

This shire draws attention because of the clarity of a document submitted by the sheriff and gentry setting forth the theories of loyalty held by them. Well up in the north, bordering on the king's counties of York and Lincoln, Nottingham mustered her trainbands for the king's service pursuant to Commissions of Array sent to Lord Newark, John Digby, sheriff, and others.¹¹⁰ Lord Newark made a speech upholding the king's position and pledging undivided loyalty.¹¹¹

Then follows a statement signed by the sheriff and gentry, eighty in all, sent to the Parliament probably in answer to demands from that body soliciting support in Nottinghamshire. After reciting conditions, it continues:

We are distracted with contrary commands, the Houses of Parliament command one thing, the King forbids that command, the

¹⁰⁵ Rye, Walter, in *Vict. Co. Hist., Norfolk*, II, 504-5.

¹⁰⁶ *Ibid.*, p. 506.

¹⁰⁷ *Ibid.*, p. 507.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, pp. 508-9. These places were Norwich, Lynn, and Lowestoft. At the latter place Cromwell was at one time nearly captured by royalists, so it was reported.

¹¹⁰ *Eng. Hist. Tracts* (U. of M.), Vol. XI.

¹¹¹ *Ibid.*

King commands and the Houses of Parliament forbid that command and we are at a stand. . . . We have ever been taught that all those Laws made in Parliament consist of three Estates, the Commons, the Lords, and the King, and we think it dangerous to untwist that triple cord; and we hold it our greatest privilege, that the King and Lords . . . could not make a law to bind us without our consent in Parliament; and, by the same reason, we cannot expect that the Commons, with the Lords, should make a law, or an ordinance, of the force of a law, to bind, without the King, especially against the King.¹¹²

Thus was advanced the argument, quite popular at the time, that the lawmaking body of England was a threefold group and that the consent of all was necessary to legislate. One historian pronounces this document a remarkable exposition of this theory.¹¹³

OXFORDSHIRE

"Der Graf von Berkshire stieß in Oxfordshire mit Hampden zusammen und ward von ihm verhaftet."¹¹⁴ This tells the story in the area. The Earl of Berkshire and others had been named to put the king's Commission of Array into effect.¹¹⁵ Wattleton was named as an assembling place.¹¹⁶

Mr. Whitlocke and Colonel "Hambden" were acting for Parliament, the former having been named to enforce the Militia Ordinances and the latter to aid him with a regiment of horse. These together repaired to Wattleton and, upon seeing them approach, the commissioners of Array and others fled. They were pursued, and the Earl of Berkshire and a few others were captured and conveyed to London, where the earl was put in prison.¹¹⁷

Thus ended the attempted execution of the king's writ in this unhappy district. However, Oxfordshire continued to billet the king's soldiers at times and paid monthly contributions to the royal cause.¹¹⁸ The inhabitants complained of their sorry plight: "We are all here in a sad and woefull condition, our hay, straw, fodder is all spent; the few cattle

¹¹² *Eng. Hist. Tracts* (U. of M.), Vol. X.

¹¹³ Ranke, *Englische Geschichte*, IX, 136, says, "Diese Adresse ist merkwürdig."

¹¹⁴ Ranke, *op. cit.* IX, 143.

¹¹⁵ Rushworth, *Collections*, IV, 685.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, p. 684.

¹¹⁸ Letter from Oxford to the Commons in "True Diurnal," *Gay Tracts* (Harv.), 300. 5.

we have must perish We pay so much monthly to the King's army and billet so many and are paid nothing."¹¹⁹

At the approach of parliamentary forces the royalists and their sympathizers fled from the town, "and a great quantity of University Scholars, undergraduates, Masters of Art, and Doctors of the Civil Law went along with them, muskets and swords by their sides."¹²⁰ Evidently the students of Oxford did not form a very effective fighting contingent in their sovereign's service.

RUTLAND

Rutland was almost too small to play a very conspicuous part in the history of the early Civil War period, yet it illustrates the experience of an area which changed from royalist control to domination by the Parliament. It was uniformly loyal to Charles and had contributed troops for his wars in 1640.¹²¹ But it protested against his desertion of the Parliament in 1642.¹²² The two members of the Commons in the Short and Long Parliaments apparently sided with the king.¹²³

With the outbreak of hostilities many volunteers flocked to the army of Charles at Nottingham,¹²⁴ while the Viscount Campden, commissioned by royal command, was able to raise horse for the royalist cause.¹²⁵

Such was the distinctly royalist character of the shire until the early part of 1642. By that time, the Earl of Exeter, who had been named lord lieutenant by the Commons, had undertaken aggressive action for the parliamentary cause. His work bore fruit; for by December of that year, he was fully in control of the shire.¹²⁶

SOMERSET

Geographical conditions helped to determine the character of the history of Somersetshire. Along with other western and northern areas, it was quite backward. The new waves of political thought penetrated slowly.

In previous centuries, Somerset with most other shires had contributed her quotas of men. In 1298, the records show a

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Forbes, V. A., in *Vict. Co. Hist., Rutland*, I, 186.

¹²² *Ibid.*, pp. 186-87.

¹²³ *Ibid.*, p. 187.

¹²⁵ *Ibid.*

¹²⁴ *Ibid.*, p. 188.

¹²⁶ *Ibid.*, p. 189.

generous response;¹²⁷ in 1314, its tenants-in-chief had served so well that several received "writs of exoneration" freeing them from future military obligations.¹²⁸ The townships were compelled to pay seven weeks' wages to foot soldiers raised for Edward in 1311.¹²⁹ Commissions of Array were used to raise men for service in the years following.¹³⁰

On the eve of the Civil Wars, Somerset was an area partly agricultural and partly industrial. This condition shaped its policies in the contest between king and Parliament. The cloth trade reached considerable development by the seventeenth century, and the Parliament had aided in this growth.¹³¹ Weavers from the Netherlands had come in to aid.¹³² The great land-owners to the west and north were still untouched by these modern influences, and the county, apart from the commercial element, was for king and church.

The "battle of the tracts" and rival petitions characterized the contest in the spring and summer of 1642.¹³³ Suggestions toward settlement of the differences were frequently made, one of which proposed that, until the question of military control be settled, it be centered in the hands of the justices of the peace.¹³⁴

The king's Commission of Array was addressed to Lord Hertford at Bath;¹³⁵ Lords Pawlett, Seymour, and Coventry were also included, as well as about twelve other heads of

¹²⁷ Palgrave, *Parl. Writs*, I, 316, 330, 335, 337, 366, 377.

¹²⁸ *Ibid.*, II (Div. 2) 437, 439, 442, 443, *passim*.

¹²⁹ *Vict. Co. Hist., Somerset*, II, 186.

¹³⁰ Palgrave, *op. cit.*, II (Div. 2), 623, 626, *passim*; also *Vict. Co. Hist., Somerset*, II, 187 ff., and notes.

¹³¹ The following acts deal with the cloth trade in Somerset: 5 & 6 Edward VI, c. 6; 2 & 3 Phil. & Mary, c. 12; 4 & 5 Phil. & Mary, c. 5. For the other acts and aid rendered, *vide* Cunningham, *Modern Times*, I, 32, 375; also *State Papers, Dom., Jas. I*, cxxviii, 73-77; Hist. MSS Com., Rep. III, App., 63, quoted in *Vict. Co. Hist., Somerset*, II, 313.

¹³² *Acts of P. C.*, 1550-52, p. 510; Somers Arch. Soc. *Proceedings*, 1881, XXVI, quoted in *Vict. Co. Hist., Somerset*, II, 313.

¹³³ Both sides presented petitions. One, 15 August, 1642, asked that the king suspend the Commission of Array and that Parliament suspend the Militia Ordinances and then meet and settle their differences. *State Papers, Dom.*, 1642-43, p. 371.

¹³⁴ Petitions are given in *Eng. Hist. Tracts* (U. of M.), May-June, 1642, Vol. X; *Ibid.*, Vol. II; *Vict. Co. Hist., Somerset*, II, 204-5, quoting Bodl. Shelf Mark, Ashm. H. 23 (162).

¹³⁵ Clar. MSS, 1738 (1), quoted in *Vict. Co. Hist., Somerset*, II, 205; *Eng. Hist. Tracts* (U. of M.), Vol. XI. Hertford had been named lord lieutenant of the county in 1638-39.

great houses. The parliamentary Militia Ordinances were directed to Colonel Popham, Sir Thomas Wroth, and others.¹³⁶ Both commissions and ordinances received support; large numbers joined the king's forces and the parliamentarians recruited a force of about a thousand.¹³⁷ Clarendon wrote that the royalists by acting promptly could have scattered and destroyed the parliamentary force.¹³⁸

The inhabitants of several hundreds through the sheriff petitioned Sir Robert Foster, justice of the assize, in August, 1642, for a decision as to the legality of the rival orders.¹³⁹ Selden claimed that the Commissions of Array and the parliamentary Militia Ordinances were both illegal and that "the Ordinances, were, if possible, the less legal of the two."¹⁴⁰ Attacks were made upon the king's commissions; it was charged that they were illegal, and, as they had never been used in that generation, these assertions received support.¹⁴¹

The parliamentary forces gathered at Shepton Mallet, while the royalists established themselves at Wells.¹⁴² A clash ensued, the opening of the Civil Wars in Somersetshire.¹⁴³ The parliamentary leaders caused presentments to be made against the royalists for coming armed *contra pacem*, while the parliamentarians were accused of unlawful assembly. Hopton voluntarily stood trial at Truno and was triumphantly acquitted.¹⁴⁴ The Commons ordered the parliamentary committee for Somersetshire to execute the parliamentary ordinances "for the suppression of the Rebellion and Commotion raised by the Marquis of Hertford,"¹⁴⁵ and to "defend and protect his Majesty's subjects from Violence and oppression by the illegal Commission of Array."¹⁴⁶

The Earl of Bedford, lord lieutenant of Somerset and Devon, after being involved in some difficulties was superseded by the Earl of Pembroke.¹⁴⁷ In August, 1642, an attempt to arbitrate was made by the rival groups, but the demands of the parliamentary committee were impossible of acceptance, so nothing came of the attempts.¹⁴⁸

¹³⁶ *Vict. Co. Hist., Somerset*, II, 205.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Bellum Civile*, Pub. of Somerset Record Soc., Vol. 18 (1902), xxi.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*, p. xxii.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ C. J., II, 717.

¹⁴⁶ *Ibid.*

¹⁴⁷ C. J., III, 204, 206, 216, 238.

¹⁴⁸ Negotiations looking toward arbitration went on quite successfully until the parliamentarians demanded: (1) that all troops acting pursuant to

As late as 1644, after Rupert had secured practically complete control of the county for the king, a petition to his majesty to end the struggle appeared.¹⁴⁹ A plan to unite Somerset, Dorset, Devon, and Cornwall into an organization for the king, to offset the Eastern Association for the Parliament failed, though Somerset remained royalist.¹⁵⁰

STAFFORDSHIRE

The tenants of Staffordshire had rendered extensive military service from the time of Richard II.¹⁵¹ In this troublesome period, when a war with France and Spain was further aggravated by invasions of the Scots, the French and English rolls contain records of Staffordshire military service.¹⁵² Commissions of Array were used in the county in 1383-84, to recruit men for the Scotch wars.¹⁵³

The irregularity of military practices is shown in the affair of one Philipott, a rich merchant of London, who equipped a small squadron of his own and captured sixteen Spanish ships engaged in ravaging the east coast of England.¹⁵⁴ Peculiarly, this ravaging fleet was commanded in part, so the story goes, by one Mercer, himself a Scotch privateer with a fleet and crews, partly Scotch, partly Spanish. For this Philipott was censured by the council, but the king knighted him.¹⁵⁵ James often hunted near Needwood.¹⁵⁶ The Roman Catholic party was strong, and the leniency of Charles toward them gave offense to the Puritans.¹⁵⁷

the Commissions of Array be disbanded, (2) that the Commissions be withdrawn, (3) that the chief authors of the recent disturbances (at Shepton Mallet) be sent for to answer to Parliament, (4) that all arms and property seized by the royalists be returned, (5) that all prisoners be discharged.

Letters from John Ashe, Esq., to the Speaker, in *Eng. Hist. Tracts* (U. of M.), Vol. XI

¹⁴⁹ Walker, *Historical Discourses*, 99-103; Rushworth *Collections*, pt. III, Vol. II, 77-78; Cal. S. P., Dom., 1644, p. 511; all quoted in *Vict. Co. Hist.*, Somerset, II, 209.

¹⁵⁰ *Vict. Co. Hist.*, Somerset, II, 210.

¹⁵¹ Wrottesley, G., on military service performed by the Staffordshire tenants during the reign of Richard II, from original Rolls in Public Record Office in *Staffordshire Historical Collections*, Vol. XIV, 321 ff. (William Salt, Arch. Soc. Pub.).

¹⁵² *Ibid.*, quoting Queen's Remembrancer, Army, Bundle 51 (Pub. Rec. Off.).

¹⁵³ Wrottesley, *op. cit.*

¹⁵⁴ *Ibid.*, 272, note.

¹⁵⁵ *Ibid.*

¹⁵⁶ Curtler, W. H. R., in *Vict. Co. Hist.*, Staffordshire, I, 217 ff.

¹⁵⁷ *Ibid.*, p. 255.

In the musters of 1640 to suppress the Scotch Covenanters, the roll in Staffordshire was taken by Sir Hervey Bagot, Walter Wrottesley, and Thomas Crompton, all serving as deputy lieutenants under the lord lieutenant, Robert Devereux, Earl of Essex, later the parliamentary leader.¹⁵⁸ The trainbands were called and about three hundred additional men impressed, the cost resting on the county until they joined the main army. Under an act of Edward III, a cavalry force of nearly three hundred was likewise raised.¹⁵⁹ Their service was not very satisfactory, as they mutinied,¹⁶⁰ or "ran like sheep" on meeting the Scots.¹⁶¹

At the outbreak of the Civil Wars, Lord Paget raised a regiment for the king's service.¹⁶² There was also a strong neutral party in the county.¹⁶³ The Parliament drew the support of nearly half of the great land-owners.¹⁶⁴

Geographically the yeomen of the east were for the parliamentary cause, while those of the north and west favored Charles.¹⁶⁵ The Puritan country gentry tried to remain neutral; the tradesmen opposed the royalists.¹⁶⁶

Clarendon commented enthusiastically upon the support pledged to Charles upon the occasion of a royal visit to Staffordshire.¹⁶⁷ The county was predominantly royalist, but not unanimously so. By May, 1643, all of the southern and central portions were held for the king, while the north still supported the Parliament.¹⁶⁸ By December, 1643, the Parliament was supreme, only a few isolated places being held by the royalists.¹⁶⁹

¹⁵⁸ The Staffordshire Musters of 1640, from the original musters roll at Wrottesley, G. Wrottesley, *op. cit.*, XV, 201 ff.

¹⁵⁹ *Ibid.*

¹⁶⁰ *State Papers, Dom., Charles I*, Vol. 460, No. 8.

¹⁶¹ Curtler, *op. cit.*, p. 256.

¹⁶² *Ibid.*, p. 257.

¹⁶³ Curtler, *loc. cit.*, gives these figures: Total number of great land-holders, 95, of whom 72 were Protestant, and 23, Roman Catholic. Of the 95, only 68 took part, 28 for the king and 40 for the Parliament. Sixteen of the 28 who joined the king were of Catholic families and 12 Protestant; of those supporting the Parliament, 40 were of Protestant houses and none Roman Catholic.

¹⁶⁴ Or 40 out of 95 great houses according to Curtler's figures.

¹⁶⁵ Curtler, *op. cit.*, p. 258.

¹⁶⁶ *Ibid.*

¹⁶⁷ "A more general and passionate expression of affection cannot be imagined than he received from the people of Staffordshire as he passed." Clarendon, *Hist. of the Rebellion* (Clar. Press Ed.), VI, 29; quoted by Curtler, *op. cit.*, p. 258.

¹⁶⁸ Curtler, *op. cit.*, p. 262.

¹⁶⁹ *Ibid.*

SUFFOLK

"Puritan Suffolk" as one writer calls it, seems to have been more interested in establishing its own self-sufficiency than in promoting puritanism.¹⁷⁰ The Covenanters of Scotland had many sympathizers, while the Puritans predominated especially in Ipswich.¹⁷¹ The shire was a "hotbed for new ideas."¹⁷² With the opening of the Civil Wars, the Parliament effected an organization in the county with little opposition, and the Militia Ordinances met ready response. Later on Suffolk joined the Eastern Association. The Roman Catholics possessed great estates, which were the object of a burdensome assessment by the Commons.¹⁷³

The services of the Suffolk troops could not have proved very satisfactory, for, with the approach of harvest, they mutinied and went home.¹⁷⁴ Suffolk, predominantly parliamentary, suffered a royalist reaction toward the close of the Civil Wars.¹⁷⁵

SURREY

Surrey, traversed by roads to London, lacking a large city, the site of Guildford Castle, favorite stopping place of kings, has a history featured by the presence of many curious land tenures.¹⁷⁶ The *servitium debitum* was due from only about eighty in the county. Nearly half the service was owed by the great De Clare family;¹⁷⁷ the De Warenne house was the other great land-holding group. Military levies, although they made the general obligation to bear arms distinct from the feudal levies, had produced few men.¹⁷⁸

In 1547, the Earl of Arundel was lord lieutenant;¹⁷⁹ others followed him in this position;¹⁸⁰ troops were raised by impress-

¹⁷⁰ Brown, Mary C., in *Vict. Co. Hist., Suffolk*, II, 157, 158.

¹⁷¹ *Ibid.*, p. 189.

¹⁷² *Ibid.*

¹⁷⁴ *Ibid.*, p. 192.

¹⁷³ *Ibid.*, pp. 190, 191.

¹⁷⁵ *Ibid.*

¹⁷⁶ Malden, H. E., in *Vict. Co. Hist., Surrey*, I, 341 ff.

¹⁷⁷ *Ibid.*, 345-53.

¹⁷⁸ In 1322, Surrey and Sussex (excepting the city of Chichester) raised 500 men; in 1339 Edw. III got 20 men-at-arms, 80 armed foot, and 80 archers; in 1549, Sir Christopher More of Loseley, acting for the king, secured horse and foot (Malden, *op. cit.*, pp. 360, 370, quoting Loseley MSS, VI, 3.

¹⁷⁹ Acts of Privy Council (N.S.) Vol. II, 1547; quoted by Malden, *op. cit.*, p. 370.

¹⁸⁰ Malden, *op. cit.*, p. 371.

ment in 1579-88.¹⁸¹ In the reign of Charles, the sentiment in Surrey, influenced by the Puritans and parliamentary London nearby, was strong against the sovereign.

Charles Howard, the Earl of Nottingham, was made lord lieutenant by the Long Parliament in February, 1642.¹⁸² He and his assistants were able "to settle the county in a posture of arms" for the Parliament. Royalist activity, however, was not entirely absent even in this center of puritan activity. One Mr. Quennel of Lythe Hill, Haslemere, had the king's Commission of Array and succeeded in collecting a small band for the royal service.¹⁸³ Quennel was an iron-master and made guns for Charles until prevented.¹⁸⁴ Kingston, with its important bridge, was royalist, as was also Farnham Castle.¹⁸⁵ Parliamentary sentiment was the stronger, but later dissension split the ranks here as elsewhere.

SUSSEX

Sussex, a maritime county, divided its sympathies in the controversies of the Stuart period. Its greatest tenant was the Earl of Arundel, who held the Honour of Arundel under a grant from Henry II and owed, therefore, eighty-four and one-half knights' service.¹⁸⁶ Its great castles were at Arundel and Pevensey; its important city was Chichester.

In the disputes around the year 1642, east Sussex, the home of the poorer classes, leaned toward the Parliament; the west was the royalist stronghold of the gentry class.¹⁸⁷ Chichester, chiefly because of the efforts of one William Cawley, a wealthy brewer, was held by the Puritans, but was captured by the royalists.¹⁸⁸ Later, however, the parliamentarians under Sir William Waller took control, and by 1644 had captured the royalist stronghold, Arundel Castle.¹⁸⁹ The county was quite divided, and neither party was in complete control.

¹⁸¹ Loseley MSS, XII, 61; quoted by Malden, *op. cit.*, p. 388.

¹⁸² Malden, *op. cit.*, p. 405.

¹⁸³ Loseley MSS, VI, 174; quoted by Malden, *op. cit.*, p. 405. Only 72 men were in this group and only 22 of these were armed.

¹⁸⁴ Malden, *op. cit.*, pp. 407-8.

¹⁸⁵ *Ibid.*

¹⁸⁶ Salzmann, L. F., in *Vict. Co. Hist., Sussex*, I, 491.

¹⁸⁷ *Ibid.*, pp. 521-23.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

WARWICK

Warwickshire, with Warwick and Kenilworth castles, had supplied men for military service on various occasions.¹⁹⁰ In 1640, Robert Rich, Earl of Warwick, was lord high admiral of England and, luckily for the cause, cast his lot with the Parliament.¹⁹¹ He, acting with Lord Brooke, controlled most of the county, though not all of it. The king garrisoned Kenilworth and Tamworth; and Lord Northampton, the king's deputy, raised troops, including a regiment of horses led by the fifteen-year-old boy, Thomas Windsor of Hewell Grange.¹⁹²

Birmingham was actively for the Parliament, but the rest of the county was not completely dominated by either side for very long. Three weeks before the king raised his standard at Nottingham, a skirmish took place at Kineton in Warwickshire between the followers of Lord Brooke for Parliament and Lord Northampton for the king. The latter was defeated.¹⁹³

The royalist cause gained in the county by 1644, and by 1645 the parliamentarians, evidently in a bad way, petitioned for protection against "royalist depredations."¹⁹⁴

WORCESTERSHIRE

Worcestershire was strategically located at the outbreak of the Civil War. On the direct line between Oxford and Wales, the one the chief headquarters of Charles in this part of the country, the other his hoped-for source of re-inforcements, it was essential that the county be held for the king. Its position gave it control of the "king's high stream of the Severn," while in war times, it was a heavy producer of munitions. Stourbridge turned out shot, Dudley cast cannon, and numerous forges in the north made swords and pikes.¹⁹⁵ Though reputed a royalist county, the workings of the Commissions of Array reflect the strength of the opposition.

¹⁹⁰ *Vict. Co. Hist., Warwick*, II, 421, 444; also *S. P., Dom., Chas. I.*, ccccliv, No. 82.

¹⁹¹ *Vict. Co. Hist., Warwick*, II, pp. 444 ff.

¹⁹² Dugdale, *Antiq. of Warw.*, II, 731, quoted in *Vict. Co. Hist., Warwick*, II, 449.

¹⁹³ Gardiner, *Hist. of the Great Civil War*, I, 13.

¹⁹⁴ *Vict. Co. Hist., Warwick*, II, 450, 454, 455.

¹⁹⁵ Bradley, A. G., *Worcestershire*, p. 49. London, 1909.

Lacking a lord lieutenant at the opening of hostilities, the king's Commission was issued to a group of gentry, of whom Sherrington Talbot was the leader.¹⁹⁶ The sheriff of the county was also included.¹⁹⁷ This group was at the head of a powerful faction sympathetic to Charles, which included most of the gentry. These controlled most of the strong places on the Avon, the fortress of Hartlebury, then as now the episcopal residence; Bewdley, strategically located on the Severn; and Dudley in the north, whose forges supplied royal arms.¹⁹⁸

In spite of this apparently overwhelming preponderance of royalist influence, however, the Array met with strong opposition. The Commons acted promptly to further the Militia Ordinances and forestall the Commissions.¹⁹⁹ As a result of their activities, Mr. Sherrington Talbot, "the younger," and the sheriff were "sent for as delinquents" by the House. The sheriff appeared, but there is no record of Talbot's having heeded the summons.²⁰⁰

In the meantime, July 20, 1642, the Commons had formally declared the Commissions of Array illegal and ordered the judges and justices of assize of the several counties of England and Wales "to declare and publish that the said Commissions of Array are against the law and against the liberty and property of the subject."²⁰¹ Apparently some of the judges thus instructed did not readily comply, because we find advice, in a resolution of the House, to the gentlemen of one of the counties (Kent) "to use their best endeavour that the judge, in his circuit, do publish the Order of both Houses concerning the Commissions of Array."²⁰²

The sheriff of Worcestershire, finding himself in the difficult position of having two sets of contrary orders to carry out with regard to arraying the men of his county, tried to satisfy both sides by publishing both the king's Commission and the parliamentary Ordinances. Sent for, he explained at the bar of the House that when he posted the royal orders he was not

¹⁹⁶ Sessions Rolls (Worc. Hist. Soc.), p. 700, quoted in *Vict. Co. Hist., Worcestershire*, II, 219.

¹⁹⁷ C. J., II, 1640-42, 661.

¹⁹⁸ *Vict. Co. Hist., Worcestershire*, II, 219; Bradley, *Worcestershire*, 49, 50.

¹⁹⁹ C. J., 1640-42, II, 661.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, p. 683.

²⁰² *Ibid.*, p. 685.

aware of the action of the Commons.²⁰³ He was let off with a caution to be more careful in the future not to have anything to do with the Commissions of Array, to diligently promote the parliamentary cause in his community, especially to "speedily bring in any contributions of money."²⁰⁴

YORK

York has had an ancient and honourable history. Practically the independent kingdom of Northumbria, it recognized no conqueror until the time of William I. Even then disaffections frequently occurred. Becoming more agreeable to sovereignty, it served from Edward I on as practically the northern capital. Councils and courts frequently sat there, and from it operations against the troublesome Scots were directed.²⁰⁵ With its heritage of independent actions, it did not take kindly to new dynasties. York clung to the deposed Yorkists and supported the Symnel pretendership. In the sixteenth century, the tenants of Richmondshire of the Richmond Honour and Castle claimed to hold their estates by border service and to have a tenant right of renewal.²⁰⁶

Yorkshire was restless under Tudor rule, and a rising occurred in 1489 over the levying of a heavy subsidy for a war in Brittany.²⁰⁷ With strong Roman Catholic tendencies, it protested against the innovations of Henry VIII in the Pilgrimage of Grace.

At the time of the Armada, Hull supplied two ships and a pinnace,²⁰⁸ together with troops, the latter under protest, and after an attempt at concealment of the real number available for military service "so as not to establish a precedent."²⁰⁹ York, possibly as a reaction against the Tudors who were never very popular, showed a friendliness for the Stuarts. Several

²⁰³ *Ibid.*, p. 684.

²⁰⁴ *Ibid.*

²⁰⁵ *Vict. Co. Hist., York*, III, 394, 402, from which most of this material is taken.

²⁰⁶ "Hist. of County of York, North Riding," in *Vict. Co. Hist.*, I, 12 and note. *Vide* also *Cal. S. P., Dom.*, 1601-3, p. 658; and *Add.*, 1547-65, p. 551.

²⁰⁷ Plumpton, *Correspondence* (Camden Soc.), 265, quoted in *Vict. Co. Hist., York*, III, 411. The insurgents held the county for a time.

²⁰⁸ *Acts of P. C.*, 1588, p. 10; *Cal. S. P., Dom.*, 1581-90, pp. 374-77.

²⁰⁹ *Cal. S. P., Add.*, 1580-1625, p. 250. Also *Var. Coll.* (*Hist. MSS Com.*), 106, all quoted in *Vict. Co. Hist., York*, III, 416-17.

royal visits strengthened this devotion, though the arbitrary acts of James and Charles aroused protest even in this area.

Sir Thomas Wentworth, later to become the famous Earl of Strafford, sat in Parliament for Yorkshire, and, curiously enough, opposed royal policies, including the forced loans.²¹⁰ After 1628, he changed over to the royal side and served the king for a time as lord president of the North.²¹¹

The policies of Charles brought him disfavor, ship money and billeting especially.²¹² Yet reports tell of the loyalty in raising trainbands for the Scotch wars, which "so pleased him (Charles) that he distributed money among them and praised them personally."²¹³ In 1640 some gentlemen of the county agreed to pay the county trainbands for two months.²¹⁴ In the spring of 1642, Charles with his followers arrived at York and established his headquarters, apparently amidst an outburst of enthusiasm and loyalty. Sir Thomas Gore, the sheriff, and a large party of country gentry joined in the welcome and the mayor of the city of York, Edmund Cowper, was knighted.

The only rift in the situation was at the important city of Hull, which was a known center of parliamentary influence. The king sent the Earl of Northumberland to demand the city, but the mayor, aldermen, and burgesses refused to admit him. The Parliament had, meantime, sent Sir John Hotham to Hull as governor. Later Charles and his party visited the city and demanded entrance, but Hotham stood firm. This was the first overt act of hostility in the impending struggle in this area.²¹⁵ Several sieges failed to reduce the city, which was governed by a parliamentary committee after Hotham and his son had been removed on the charge of plotting to deliver the city into the hands of the king.²¹⁶

Protests from other parts of the shire appear. At the quarter sessions at Richmond in the North Riding, presentments were returned for refusals to pay assessments levied for the king's

²¹⁰ *Vict. Co. Hist., York*, III, 417.

²¹¹ *Ibid.*

²¹² Gardiner, *Hist. of Eng.*, IX, 177.

²¹³ Whittock, N., *History of the County of York*, p. 133, quoting Drake's *Ebor.*, V, 137.

²¹⁴ *Ibid.*, pp. 133 ff.

²¹⁵ *Ibid.*, pp. 138-39; also *Vict. Co. Hist., York*, III, 419 ff.

²¹⁶ Whittock, *op. cit.*, pp. 139 ff. Sir John and his son, Captain Hotham, were beheaded for alleged complicity in the plot to betray the city.

cause.²¹⁷ The interruptions, causing "a great decay of Trade and Commerce," were protested against.²¹⁸ Each side vied with the other in trying to strengthen its cause in Yorkshire by petitions, proclamations, and appeals.²¹⁹ A parliamentary committee was active in its efforts against the king.²²⁰

Frequent mass meetings were called by both sides, which were largely attended, though by no means always unanimous in their views. On June 3, 1642, sixty thousand people, so it is said, assembled at Heworth Moor in response to a royal proclamation. The king came heavily attended and was greeted with loyal shouts. But a strong parliamentary faction was also there and endeavoured to present a petition to the king personally. Failing in this, it was read and enthusiastically received by some at least.²²¹

Commissions of Array and Militia Ordinances both received response, the former, however, to a greater degree. Gardiner thinks that Charles lost favor in York by granting these commissions to Roman Catholics.²²²

Young Hotham was a successful leader of the parliamentary forces, especially strong in the West Riding. Later, the Fairfaxes, Lord Fairfax and his son Sir Thomas, took up the cause, and the popular issue prospered. The Earl of Newcastle, however, offset this by his fine work for the king in this area.

In fine, the history of the early months of the war in York shows conclusively that, even in such an area as York, reputed to be a county almost unanimously royalist in inclination, there was a strong, vigorous, active parliamentary faction.

WALES

Although the thirteen counties of Wales unanimously rejected the parliamentary requests for aid and assured the king of their full devotion, contrary expressions of opinion are found, and some slight opposition to the royal cause appeared in certain areas.

²¹⁷ Quarter Sessions Record, North Riding of York. (J. C. Atkinson, ed.) in *Publications of North Riding Record Society*, Vol. IV, *Introd.*, v, and pp. 177, 178, 205.

²¹⁸ "A Petition, etc." in *Eng. Hist. Tracts* (U. of M.), Vol. X.

²¹⁹ *Vict. Co. Hist., York*, III, 419 ff.

²²⁰ *Ibid.*

²²¹ From an account in *Vict. Co. Hist., York*, III, 419.

²²² Gardiner, *Hist. of Eng.*, X, 202.

The king named the Marquis of Hertford lieutenant general of the western counties of England and the six counties of South Wales.²²³ To him was sent the Commission of Array in 1642.²²⁴ He was aided by the Marquis of Worcester, a staunch supporter of the king, and his son Herbert, the Earl of Glamorgan, who did effective work among the Roman Catholics in the area.²²⁵ In Glamorganshire, however, the Earl of Pembroke aided the parliamentary cause.²²⁶ In North Wales royal sentiment was even more in the preponderance.²²⁷

On the whole, Wales was for the king almost unanimously, though even it was not without its evidence of some parliamentary sympathy.

IRELAND

Under the heading, "Ireland, the King's County," the Historical Manuscripts Commission published the manuscripts in the possession of the Earl of Rosse, Parsontown Castle, which were chiefly books of orders, assessments, and rules for the commissioners in Ireland, 1642-79.²²⁸ While this is for a later date, some of the material suggests the prevailing situation in the time of the Civil Wars. Orders for the commissioners of Array, notes of their meetings, copies of letters, accounts of monies expended for training the militia, and records of lands distributed to soldiers, all are contained therein.²²⁹

The troubled state of Ireland on the eve of the Civil Wars precluded any great aid to the king from this source, but such sympathy and support as were forthcoming were given to the royal cause.

²²³ Phillips, John R., *Memoirs of the Civil War in Wales and the Marches*, I, 100.

²²⁴ *Ibid.* Also Rushworth, *Collections*, pt. III, Vol. I, 672.

²²⁵ Phillips, *op. cit.*, I, 103.

²²⁶ *Ibid.* Phillips quotes the order circulated in this shire calling upon the militia to check the progress of the Commission of Array, II, 4 ff.

²²⁷ *Ibid.*, I, 104.

²²⁸ Hist. MSS Com., *First Rep.*, App., 127.

²²⁹ *Ibid.*

CHAPTER VIII

THE LEGALITY OF THE COMMISSIONS

“THIS unhappy difference about the militia being (next the Introduction of Popery) the spring from whence our uncivil wars have issued,”¹ wrote a keen, though jaundiced, contemporary observer of events in 1643. And the “unhappy difference” arose largely from the fact that it was difficult to determine the legality of the king’s Commissions of Array.

When the Long Parliament was engaged in a bitter debate with the lawyers of the crown over control of the military forces of the realm, frequent references were made on both sides to the historical origins of the rival claims. In a general way the king depended upon the feudal theory of military service with himself as the supreme head, while the Parliament upheld the idea of a militia subject to the supervision of the popular assembly. Each had statutes to which reference might be made in support of these opposing positions, and in a way both points of view were right. This was because England’s military history reflects the twofold nature of the establishment; the feudal contribution with the king at the head, and the militia idea developed largely under parliamentary control.²

An examination of the statutes passed relating to the militia reflects this twofold character. It is possible to point out those laws which relate particularly to the militia and those which pertain to the army other than the militia.³

The Assize of Arms of Henry II embodying the old English fyrd idea in the form of a national militia is the first official expression of the period after the conquest in regard to the bearing of arms.⁴ The well-known Statute of Winchester

¹ William Prynne in Tract, “The Sovereigne Power of Parliaments” (London, 1643), *Gay Tracts* (Harv.).

² See pp. 57 ff.

³ See statutes cited on p. 59. The distinction is made by Hallam and also by Lord Hale (Note at 1, Co. Litt., 71 a).

⁴ Fortescue, *History of the British Army*, I, 12. The Assize is not generally classed as one of the statutes bearing on the army.

13 Edw. I, c. 6,⁵ together with the Articles of Enquiry upon these, 34 Edw. I,⁶ both pertained to the military idea. The statute was a command to bear arms "after the ancient assize," and arranged for a view of armour to be made twice a year. This statute was confirmed at least five times in subsequent reigns, and was not repealed until 4 & 5 Phil. and Mary.⁷

With the next important law in regard to military service, 1 Edw. III, c. 5, we come to emphasis upon the army other than the militia.⁸ It contains clauses regulating the nature of service which the king might demand in his feudal capacity as sovereign.⁹ And it is interesting and suggestive to note that these clauses were of a nature aiming to restrain the king's rights in these respects.¹⁰

The seventh clause was directed to the Commissions of Array and the arbitrary actions of those in charge of their execution,¹¹ while the fifteenth aimed to restrict impressment.¹² The statute is not founded upon the militia idea.

If Bishop Stubbs' contention is correct that the evil of the Commission of Array is a form of the abuse of purveyance,¹³ the next statute which needs to be noted is 14 Edw. III, stat. 1, c. 19,¹⁴ which aimed to restrict and limit this practice. No doubt the complaints against purveyance in general extended to what might be termed "purveyance of men."¹⁵

⁵ 1 Stat. of Realm, 96, 97.

⁶ *Ibid.*, 245-46. Passed in 1306 and directed toward enforcing 13 Edw. I.

⁷ Confirmed in:

28 Edw. I, c. 17, *Stat. of Realm*, I, 150

2 Edw. III, c. 6, *Ibid.*, p. 259

28 Edw. III, c. 11, *Ibid.*, p. 347

5 Edw. III, c. 14, *Ibid.*, p. 268

7 Rich. II, c. 6, *Ibid.*, II, 33

Repealed in 4 and 5 Phil. and Mary, c. 3. (*Stat. of Realm*, IV, pt. I, pp. 316 ff.) Probably put back into effect by repeal of this statute in 1 Jac. I, c. 25 (*Stat. of Realm*, IV, pt. II, p. 1052). Then repealed in 21 Jac. I, c. 28 (*Stat. of Realm*, IV, pt. II, p. 1239).

⁸ 1 Edw. III, c. 5, (*Stat. of Realm*, I, 255).

⁹ This was in line with the tendency to restrict in general the feudal rights of the king.

¹⁰ "That no man shall be charged to arm himself otherwise than he was wont to do in the time of his Progenitour Kings and that no man shall be compelled to go out of his shire, but where necessity requireth and sudden coming of strange enemies in to the Realme."

¹¹ 1 Edw. III, c. 5 (*Stat. Realm*, I, 255), clause 7. Commissioners not to compel men to go to Scotland or Gascoigne at the charge of the shires.

¹² *Ibid.*, clause 15. No enlistment by impressment or duress. But the practice continued.

¹³ Stubbs, *Const. Hist.*, III, 285-87 and notes (5th ed.).

¹⁴ 14 Edw. III, stat. 1, c. 19, *Stat. of Realm*, I, 288.

¹⁵ This is what Bishop Stubbs terms the Commissions of Array.

The army other than the militia was again referred to in 18 Edw. III, stat. 2, c.7, which provided that men for the king's service abroad were to be paid by the king from the time they left their home shire until their return thereto.¹⁶ This was also confirmed in 4 Hen. IV, c.13.¹⁷

Of deep import when considering a question involving the control of the military establishment is 25 Edw. III, stat. 8, c.8, passed in 1351.¹⁸ It seems to savor more of the militia theory of service, yet it starts by confirming 1 Edw. III. But it continues: "It is accorded that and assented that no man shall be constrained to find men of arms, Hobblers, or archers, other than those who hold by such service, if it be not by common consent or grant made in Parliament, for that is contrary to the Law of the Realme."¹⁹ Here seems to be an enunciation of the principle of parliamentary control of the military establishment, excepting the feudal portion and those who hold by military service. If this policy had been consistently adhered to and strengthened in succeeding periods, it would appear as though it would have amply justified the parliamentary Militia Ordinances of the Stuart period, and clearly made the distinction that, while the king might exclusively control the feudal army, parliamentary action was necessary to raise the other forces, the militia. Unfortunately, the distinction was not kept, and the issue was clouded by succeeding laws.

We come now to the statutes that were most relied upon by the crown attorneys in defending the use of the Commission of Array in the summer of 1642, 4 Hen. IV and 5 Hen. IV. They contended that these two laws clearly defined the right of the sovereign over the military establishment and sanctioned the use of the commissions in prescribed form.²⁰

The statute 4 Henry IV, c. 13, confirmed 1 Edw. III, 18 Edw. III, and 25 Edw. III and seemed to summarize the three fundamental principles laid down by these laws: first, that no one shall be constrained to go out of his county, "but only for cause of Necessity of sudden coming of strange enemies into the Realm" (*sinon p cause de necessitee de sodeigne venue*

¹⁶ 18 Edw. III, stat. 2, c. 7, *Stat. of Realm*, I, 301.

¹⁷ 4 Hen. IV, c. 13, *Stat. of Realm*, II, 137.

¹⁸ 25 Edw. III, stat. 8, c. 8, *Stat. of Realm*, I, 321.

¹⁹ *Ibid.* Also entered in Parl. Roll, 25 Edw. III, n. 23.

²⁰ See pp. 149, 156, 157, following.

destranges esnemys en Roialme); second, that men chosen to go in the king's service out of England shall be "at the King's wage from the day they do depart out of the Counties where they are chosen" (*q gentz darmes hobelers & Archiers esluz pur aler en le savice de Roy hors Denglet re soient as gages le Roy du jours qils deptiront hors des Countees ou ils feurent esluz*); and third, that no man shall be compelled to find men-at-arms *et cetera*, "other than those holding by such service, unless it be by common Assent and Grant made in the Parliament" (*q nul home soit arte de trover gentz darmes hobelers & archiers aut s q ceus q tieignent p tiel s vice sil ne soit p coe assent & gante faite en plement*).²¹ There was much dispute later concerning 5 Hen. IV, c.13. It proceeded along much the same lines as the law of the year previous, but gave especial consideration to the commissioners of Array and the Commissions of Array.²² It extended to the commissioners the same rights as were enjoyed by others regarding their liability to military service, and established what seemed to be a prescribed form for the commission. Charles's contention was that this legalized Commissions of Array by setting up an official form of the same to be always followed. This the Parliament denied. The wording of the statute is not clear, and its true purpose is difficult to interpret. While attempting apparently only to protect the rights of the commissioners of Array, it did include a form of some sort for the commission they were to use. Whether the first of these objects was the real purpose and the latter only incidental, or *vice versa*, is impossible to determine finally. This statute with its lack of clearness did more than any other one thing to spoil the orderly solution of the question of control of the military so well begun by 25 Edw. III and by 4 Hen. IV. It revived and put new life into the principle of the Commission of Array, a principle essential to the king's exclusive control of the military and one that had begun to die out in the light of the Parliament's growing participation in the government. The statute and its consequences were responsible for the Civil Wars in England.

²¹ These are quoted respectively from 1 Edw. III, 18 Edw. III, and 25 Edw. III, citations *supra*. Marks indicating omissions of letters are not included in the quoted matter.

²² 5 Hen. IV, c. 3, *Stat. of Realm*, II, 144.

The contention of crown lawyers in the Stuart period that the statute provided a form for the Commission does not seem sound in that many such writs were issued right afterward which do not follow the provisions of 5 Hen. IV.²³ In 18 Hen. VI the interests of the military establishment other than the militia are again considered.²⁴ That statute seeks to protect soldiers from the impositions of their hirers and captains and also to punish more severely the crime of desertion; 7 Hen. VII relates to the same subjects and falls into the same class of legislation.²⁵ Service on the continent is mentioned especially, and there the evil of desertion was very pronounced at this time. The act also aimed to compel captains to pay their men full wages.

In 2 Hen. VII, no particular reference was made to the militia, but the intention was to further the Tudor policy of imposing military duty upon a new class, those holding "fees, offices or annuities under the crown."²⁶ By 19 Hen. VII this was extended to include those "holding honours, lordships or lands, under Letters Patent, from the Crown."²⁷ Nothing especially new was added by 3 Hen. VIII, 15 Hen. VIII, and 33 Hen. VIII, which related to desertion and a better organization of the establishment.²⁸ In 2 & 3 Edw. VI, the military obligation was stated in the broadest terms of any law up to that time.²⁹ In 3 & 4 Edw. VI provision is made for the appointment of lords lieutenants in the shires, though it is of

²³ Many commissions in Hen. IV, Hen. V, and Hen. VI did not follow the form provided. One particularly, in 6 Hen. IV, did not (Entered in Patent Rolls, 6 Hen. IV, m. 15, *dorso*).

²⁴ 18 Hen. VI, c. 18 and 19, *Stat. of Realm*, II, 314. This was confirmed in 7 Hen. VII, *Stat. of Realm*, II, 549-50.

²⁵ 7 Hen. VII, *Stat. of Realm*, II, 549-50.

²⁶ 11 Hen. VII, c. 18, *Stat. of Realm*, II, 582. "Whereas every subgette by the dutie of his Allegieance is bounden to sve and assiste his Prince and Sov eign Lorde at all Seasons when nede shall requyre, and most especially such psones as have by hym pmocion or avauncement &c. . ."

²⁷ 19 Hen. VII, c. 1, *Stat. of Realm*, II, 648-49. This attempted to extend the feudal obligation for military service under the crown to holders of grants by Letters Patent and stated their duty in broad terms, with the qualification that they were to serve at the king's wage; "from tyme of comyng frome his House towards the King when they come to the King & frome the Kyng home ageyne at the tyme of their deptyng, after the rate of XXty myles for a Day and whiles they be wyth the Kyng's Grace, to have also the King's Wayges."

²⁸ *Stat. of Realm*, Index, Vols. III and IV.

²⁹ 2 & 3 Edw. VI, c. 2, *Stat. of Realm*, IV, 39. The subjects "according to their bounden duty" are to serve the king at all times, as well beyond the seas as at home.

interest that it is called an act for the punishment of unlawful assemblies and risings, providing the numbers who may legally gather, and so on.³⁰ This seems to support the opinion elsewhere expressed that the naming of such officials in the Tudor period was not an especially new departure, nor was it thought of at the time as an innovation, but rather, while it may have used the new designation for the officers, it was but a slightly new use of a very old system.³¹

In 4 & 5 Phil. and Mary an attempt was made to reorganize the whole military establishment.³² That act repealed all of the statutes relating to the keeping of horse and armour, and sought to organize a new basis for service determined by ownership of property. It went into great detail concerning the different grades of service to be arrived at by yearly productive value of property. It attempted to provide a national fighting force at the cost of the subject and upheld the right of the crown to impress men for service if necessary.³³ The statute was repealed by 1 Jac. I, c. 25, s. 7.³⁴

A number of statutes of the reign of Elizabeth added little, except the first expressions of the gratitude of the nation for the work of the soldiers.³⁵ This seems to be approaching nearer the nationalistic basis of the military obligation.

By 1 Jac. I, c. 25, sec. 7, as has been stated, the law 4 & 5 Phil. and Mary was repealed, but the effect of the repeal was somewhat in doubt.³⁶ The question was as to whether the repeal automatically restored to force the old laws, which

³⁰ 3 & 4 Edw. VI, c. 513. *Stat. of Realm*, IV, pt. 1, p. 107. See pp. 56-57 for suggestions that the lord lieutenant was not an especially new official, nor his appointment a new departure.

³¹ *Vide* p. 39 on material same as indicated in above note.

³² 4 & 5 Phil. & Mary, c. 11, *Stat. of Realm*, IV, pt. 1, pp. 316 ff.

³³ *Ibid.*, section 2, "If any person appointed by the king and by commission, letters, or otherwise authorized to levy, muster, or make any men serve in wars, etc."

³⁴ 1 Jac. I, c. 25, s. 7, *Stat. of Realm*, IV, pt. II, p. 1052.

³⁵ 35 Eliz., c. 4, *Stat. of Realm*, IV, pt. II, pp. 847 ff., expresses gratitude and seeks to provide national relief for wounded soldiers, the very essence of the nationalistic character of the military obligation, for the first time so clearly expressed in English history. 39 Eliz., c. 21 (*Stat. of Realm*, IV, pt. II, pp. 923 ff.), 43 Eliz., c. 3 (*Ibid.*, pp. 966 ff.), 1 Jac. I, c. 25 (*Ibid.*, pp. 1050 ff.), 21 Jac. I, c. 28 (*Ibid.*, pp. 1235 ff.), all follow this principle. It is of deep significance in the history of nationalism in the English state.

³⁶ *Vide* p. 5 above. (1 Jac. I, c. 25, s. 7, *Stat. of Realm*, IV, pt. II, p. 1052.

were by 4 & 5 Phil. and Mary repealed. The Long Parliament claimed that the repeal of the law of the joint sovereigns put into effect again all the previous statutes bearing on the military.³⁷ This uncertainty tended to complicate the situation at a time when clarity was needed. But even worse in effect was 21 Jac. I, c. 28, by which 13 Edw. I, and 33 Hen. VIII³⁸ were repealed.

After this repealing provision and along with other provisions of a general nature applying to the military, it seems to admit the Commission of Array as to finding arms, "*juxta statum et facultates*," as having been established by 5 Henry IV, at least in so far as the practice of finding arms was based upon 13 Edw. I, which later law was in effect and did enact the finding of arms, "*juxta statum et facultates*." The Parliament, however, was to take the stand that the repeal of 13 Edw. I was to make the Commission of Array illegal. They contended that it would not have been probable that a Parliament of James I would have repealed 4 & 5 Phil. and Mary, and a Parliament of 21 Jac. I would have repealed 13 Edw. I and 33 Hen. VIII, which provided for a moderate proportionment of arms and allowed an act to continue that gave the sovereign unlimited powers to raise troops as does the Commission of Array.³⁹ The law further complicated matters.

The Petition of Right touched upon military matters as one of the chief groups of causes of complaint. The subject of the use of commissions of various sorts and arbitrary commissioners for divers purposes is complained of.⁴⁰ Deserved emphasis has not been given 16 Car. I, c. 28, which was passed on the eve of the Civil War.⁴¹ The law declared all impressment by the king illegal, but authorized the justices of the peace on order of Parliament to press men from eighteen to sixty years of age.⁴²

³⁷ *Vide* pp. 116-17 ff. (Bearing on contentions of Parliament, etc.)

³⁸ 21 Jac. I, c. 28, *Stat. of Realm*, IV, pt. II, p. 1239.

³⁹ See pp. 157 ff. (On Parliament's position, etc.)

⁴⁰ Petition of Right, 3 Car. I, c. 1, *Stat. of Realm*, V, 24. The presence of so many references to the military affairs is proof of the tremendous part played by such matters in the history of the period.

⁴¹ 16 Car. I, c. 28, *Stat. of Realm*, V, 138-39.

⁴² *Ibid.*, "Whereas by the Laws of the Realme, none of his Majesties Subjects ought to be impresst or compellde to go out of the country to serve as soldiers in the wars, except in case of necessitie of the sudden coming in

This statute, if binding, seems to have the effect of making an order like the Commissions of Array of Charles impossible, while it gives the Parliament the right to call men to service without restriction. But was a statute like this "constitutional?" And could it be used to raise men to make war upon the sovereign, who was a part of the Parliament?

This concludes a survey of the chief enactments relating to the military establishment in England, the statutes upon which the question of the legality of the Commissions of Array was to be debated. In summary, they seem to reflect, first, the twofold nature of the development of the establishment throughout the years, the feudal, with the control thereof by the king recognized and admitted, or, as it possibly should be called (since it was not entirely feudal), "the army other than the militia," and the militia, with a constantly increasing recognition of control, to some extent at least, by the Parliament; second, conflicting statutes of uncertain import and interpretation which prevented the working out of the problem of control, but left that issue clouded, with the question of the legality of the Commissions of Array as the essence of the controversy; third, increasing restraint of the king's power over subjects in regard to service; and fourth, the development of nationalism in the state as reflected by the statutes of Elizabeth and not before to any appreciable extent.

While on the point of the importance of the question of the control of the military establishment in causing the Civil Wars, it is interesting to glance a little ahead and see that in the Restoration period that point is taken up and solved by statutes declaring the sole right of control over the militia to be in the hands of the king.⁴³ It was recognized that the settlement of this point was essential to the ordering of the country.⁴⁴

of strange enimies into our Kingdom or except as they be otherwise bound by the tenure of their lands and possessions . . . but the needs of troops . . . (is imperative, due to "commotions and Rebellions") . . . Justices, Mayors or other head officers shall raise men by order of the King and Both Houses of Parliament and command the Constables to assist." It is also provided that they may impress, and that wages and money are to be furnished by Parliament.

⁴³ 13 Car. II, c. 6, *Stat. of Realm*, V, 308-9. Also 14 Car. II, and 15 Car. II in *Ibid*, V, 358 ff. and 443 ff., respectively.

⁴⁴ It might be said that the ultimate placing of control of the military establishment where it is in most liberal states, is traceable to the solution arrived at in the Stuart period.

The question of the legality of the Commissions of Array in the Stuart period turned entirely about the right of the sovereign to order the military; if his right was unlimited and unrestricted, then the use of the Commissions was legal, but if it was not, the writs were not constitutional. Or, to phrase it another way, if the Commissions of Array were binding on the subject, they implied sole power to demand service of the subject; if they were not, the king was subject to parliamentary restrictions in the matter. Either way, the legality of the orders was the most important single issue.

Blackstone wrote at length concerning the question of control of the military establishment.⁴⁵ Coming at a time just after the Stuart settlement, when the generally accepted tendency was to accord to the sovereign wide authority in ordering and controlling the army, he naturally reflected that view. Yet his legal theories supported the principle of the historical accuracy of the elective feature, as regards those who are to administer that important branch of the government of the state. Of Anglo-Saxon origin he writes that in that period the military force of the kingdom was in the hands of dukes or heretochs, who were appointed throughout every province and county of the kingdom by the laws of Edward the Confessor.⁴⁶ These officials must be the prototypes of the lords lieutenants and similar officers of a later time, and a study of these should go back to that age apparently. Continuing, Blackstone points out that these were chosen for being *sapientes, fideles et animosi*;⁴⁷ they possessed great power and because of this were elected by the people in full assembly, or folkmote, like the sheriffs, "following still that old fundamental maxim of the Saxon constitution, that, where any officer was entrusted with such power as, if abused, might tend to the oppression of the people themselves, such power was delegated to him by vote of the people themselves."⁴⁸ The principle, if correct, has interesting application in the controversy between Charles I and his Parliament.

⁴⁵ *Commentaries* (Lewis, ed.), Bk. I, pp. 408 ff.

⁴⁶ *De Heretochiis*, quoted by Blackstone, *ibid.*, p. 408.

⁴⁷ *Ibid.*

⁴⁸ *Isti vero viri eliguntur per commune consilium pro communi utilitate regni, per provincias et patrias universas, et per singulos comitatus, in pleno folkmote, sicut et vice comites provinciarum et comitatum eligi debent.* Laws of

The English jurist also says that among the ancient Germans, the ancestors of our Saxon forefathers, they had dukes, as well as kings with an independent power over the military. The dukes, he states, were elective, the kings hereditary, for only so can be consistently understood that passage of Tacitus: *reges ex nobilitate, duces ex virtute sumunt*;⁴⁹ Caesar also stated: *Cum bellum civitas aut illatum defendit aut infert, magistratus qui ei bello praesint deliguntur*.⁵⁰ Blackstone then attempts to interpret the statutes in regard to military history already referred to. He states:

While they [the statutes in regard to military service] continued in force, it was usual, from time to time, for our princes to issue Commissions of Array, and send out into every county officers in whom they could confide to muster and array, or set in military order, the inhabitants of every district, and the form of the Commission of Array was settled in Parliament in 5 Hen. IV,⁵¹ so as to prevent insertion therein, of any new feudal clauses.⁵² He thus interprets 5 Hen. IV as legalizing and standardizing the Commission of Array. He continues:

But it was provided in 1 Edw. II, stat. 2, c. 5 and 7, and in 25 Edw. III, stat. 5, c. 8, that no man should be compelled to go out of the kingdom at any rate, or out of his shire, but in case of urgent necessity; nor should provide soldiers unless by consent of Parliament. About the time of the reign of Henry VIII and his children, lieutenants began to be introduced.⁵³ . . . But the introduction of the commission of lieutenancy which contained the substance of the old Commissions of Array caused the latter to fall into disuse. This state of things continued until the repeal of the statutes of armour in the reign of James I, after which Charles I issued Commissions of Lieutenancy (Array), and exerted some military powers, which, having been long exercised, were thought to have belonged to the crown; it became a question in the Long Parliament how far the power of the militia did inherently reside

Edw. Confess. (*De Heretochis*), quoted by Blackstone, *op. cit.*, p. 409. He also refers to Bede, *Ecc. Hist.*, c. 10; "These men are chosen for the general benefit of the kingdom by the common council, by the provinces, the whole country, and in each county, in full assembly [folk mote] as also the sheriffs of provinces and counties should be elected."

⁴⁹ Tacitus, *De Mor. Germ.* 7 (Blackstone, *op. cit.*, p. 409).

⁵⁰ Caesar, *De Bell. Gall.*, VI, c. 23 (*Ibid.*, p. 409).

⁵¹ *Vide* p. 142, *supra*, in re this statute and its meaning.

⁵² Blackstone, *op. cit.*, 411.

⁵³ *Ibid.*, He cites to 15 Rym. 75, for material on lieutenancies. Blackstone thinks the commissioner of Array and the lord lieutenant one and the same official. This interpretation places the antecedents of the lord lieutenant well back of the Tudor period, as it correctly should be.

in the crown, being now unsupported by any statute and founded only upon immoral usage. This question, long agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the King and Parliament; the two houses not only denying this prerogative of the crown, the legality of which might perhaps be somewhat doubtful, but also seizing into their own hands the entire power of the militia, the illegality of which step there could never be any doubt of at all.⁵⁴ Thus does Blackstone summarize the legal issues involved in the controversy and take a stand that seems to impute illegality to both the king's Commissions of Array and the parliamentary Militia Ordinances.

John Selden commented at length upon the historical evolution of the military power in England in his *Historical Discourse Upon the Laws of England*, published in 1647.⁵⁵ He states, as does Blackstone, that the chief in war was chosen by the Anglo-Saxon freemen in the field, either at the "Wit-tagemot" or at the Folkmote.⁵⁶ He concedes the gradual interference of the Parliament in the period of the rise of that body.⁵⁷ He states:

The power of the militia is either the legislative or the executive power; the legislative power without contradiction vested in the Great Council of the Kingdom. . . . And this will appear in the preparation for war, in the levying of the war and the managing thereof . . . levying men and money, &c.⁵⁸ . . . For all the inhabitants of this kingdom hold their estates under a general service which, by common right, they are bound to perform, viz., in time of danger to joyn in the defense of their Countrey.⁵⁹

Of the conduct of the war, Selden states:

The levying and managing of the war must not be denied de jure to belong to the representative body, . . . so far as may consist with the directory part.⁶⁰

But, contra, he accords the king the right to levy war "in defence of the publick."⁶¹ Thus this writer would seem to imply that by historical precedent in the English state the representatives of the state exercised some rights in military matters from earliest times, and that the duty of conducting

⁵⁴ Blackstone, *op. cit.*, pp. 411-12.

⁵⁵ Selden, John, *Historical Discourse Upon the Laws of England*. London, 1647. (Nathaniel Bacon, ed.)

⁵⁶ *Ibid.*, p. 63.

⁵⁷ *Ibid.*, p. 64.

⁵⁸ *Ibid.*, p. 152.

⁵⁹ *Ibid.*, p. 153.

⁶⁰ *Ibid.*, p. 153.

⁶¹ *Ibid.*, p. 154.

a war belongs to the legislative branch, while it is the right of the king under certain conditions to levy the war. In tracing the history of military control, Selden stated that Henry II attempted to assume all power over the militia, but he says, this trick caught not the people according to the King's meaning, for the words "ad fidem Regis &c" still left a "muse" for the people to escape, if they were called out against their duty to the kingdom, and taught a doctrine which is not yet repealed, viz., that what is not according to their Faith to the Kingdome is not according to their Faith to the King and therefore they could find it in their hearts to sit still at home when they were called forth to war.⁶²

This would seem to support the theory under which the subjects of Charles refused to obey his Commissions of Array.

The same writer stated that the power of the sovereign of immediate command, or summoning the knights to their service, was in its nature but ministerial and subservient to the power that ordered the war to be levied.⁶³ This would seem to put the king's power of executive under the supervision of the parliamentary power of levying. But, of course, Selden concedes that, despite this view, the king unlimited may levy war in time of "known danger from abroad."⁶⁴ "For the King, though he is Generalissimo, yet is he so from the People," is another significant statement in his discourse upon the subject.⁶⁵

Commenting further, the learned jurist states, "In touching arrays of men for war I find no footsteps of any power which was claimed as peculiar to the King, therein, as acknowledged by the Parliament, but many instances do I meet in opposition."⁶⁶ Selden seems to differ from Coke's assertion,⁶⁷ in Calvin's case, that subjects are bound to follow the king anywhere, with practically no reservations.

Bacon, in interpreting Selden's views, holds that Thirning's decision in 7 Hen. IV,⁶⁸ whereby wages are essential to service beyond the seas, makes such service rest upon a contractual basis and not on allegiance.⁶⁹ He also believes that

⁶² *Ibid.*, p. 207.

⁶³ *Ibid.*, p. 295.

⁶⁴ *Ibid.*, p. 299.

⁶⁵ 7 Hen. IV, Fitzherb. 100, Protect. 100.

⁶⁶ *Vide* p. 153, note 82 and notes 77 and 78. See Chap. IX, on "Allegiance and the Royal Prerogative."

⁶⁵ *Ibid.*, p. 99 of "The Continuation."

⁶⁶ *Ibid.*, pp. 99-100.

⁶⁷ See p. 152, below.

the Commission of Array does not confer unlimited power upon the king, because, he contends, the Commissions of Array were amended by the Parliament from time to time, and, if thus amended, "it does show that no King had the power inherently in himself."⁷⁰ In summary, it is argued that the Commission of Array does not confer unlimited military power upon the sovereign because, first, it is not continual, but exists only in time of great danger; second, it is not general; and third, the powers are circumscribed and limited.⁷¹

From Selden's views thus expressed, we may conclude that he believed that historical precedent showed a continuous participation by the people in the exercise of the military power. He held that no Commission of Array, or any other similar grant of power, ever could confer absolute and unrestricted control of the military establishment upon the king alone without regard to the Parliament. But of the right of Parliament, acting alone, to raise troops, Selden seems to be just as convinced that this is illegal.⁷² From these opinions we may say that he was of the view that such work had to be done by the sovereign and the Parliament acting together. This would make both the king's Commissions of Array and the Militia Ordinances illegal.

Sir Edward Coke was more convinced of the king's authority and stated it quite broadly. In Calvin's case he affirmed the unlimited doctrine that the subjects of England are bound "by their Legiance which is absolute and indefinite."⁷³

Further views of Coke upon the military follow: "Legiance is a true and faithful obedience of the subject to his sovereign"—"*Regere et protegere subdites*"—to govern and protect his subjects. There is a *duplex et reciprocum ligamen* between king and subject.⁷⁴ He concludes that 2 Hen. VII and 2

⁷⁰ Selden, *op. cit.*, "The Continuation," pp. 176-78.

⁷¹ *Ibid.*

⁷² Johnson, Geo. W., *Memoirs of John Selden*. London, 1835. pp. 282, 284-285. So also says Chas. E. H. Chadwyck Healy in *Bellum Civile*, pub. by Somerset Record Society, Vol. 18 (1902).

⁷³ Calvin's Case (Coke), Trin., 6 Jac. I, commented upon by Nathaniel Bacon in *Continuation of a Historical Discourse upon the Laws of England*. London, 1651.

⁷⁴ *Ibid.*, fol. 5 a. References are again made to these same opinions in Chapter IX on "Allegiance and the Royal Prerogative"; only such portions are here used as relate to the historical development of the theories of legality.

Edw. VI⁷⁵ hold that the subjects of England are bound to serve the king "as well within the Kingdom as without."⁷⁶ He thus appears to stress the unlimited powers of the sovereign in military control and to say that the duty of the subject to the king is one of unquestioned subservience. Coke holds that the view of Justice Thirnung in 7 Hen. IV (Protect. 100) was only that a man is not compelled to go out of the kingdom without wages.⁷⁷ Thus Coke disagrees with Selden on the meaning of the decision in this celebrated case.⁷⁸ Coke also answers the contentions expressed in Bigot's and Bohun's case⁷⁹ by saying that the rule therein laid down, that subjects are required to serve in foreign wars only according to the statutes, does not weaken the king's powers in military affairs.⁸⁰

Thus before the Stuart period the matter of the nature of the military obligation had been before the English courts on several occasions and attempts made to define the character of the service owed. The most noted cases were Bigot's and Bohun's case,⁸¹ 7 Hen. IV, Fitzherb. 100, Protect. 100,⁸² and Calvin's case.⁸³

The first of these cases seems to place military service outside of the kingdom purely upon the basis of statutory regulation rather than upon any bounden duty of the subject. While

⁷⁵ 2 Hen. VII. Thomas and Fraser, *Reports of Sir Edward Coke*. London, 1826. Vol. IV, pts. 7 and 8, p. 103.

⁷⁶ Bacon, Nathaniel, *op. cit.*, fol. 7 b.

⁷⁷ *Ibid.*

⁷⁸ Selden claimed that the payment of wages placed the relations between subject and sovereign upon purely contractual grounds rather than upon the basis of "Natural Legiance."

⁷⁹ 25 Edw. I, 2 Inst., 528, *in re* Bigot, Earl of Norfolk and Suffolk, and Bohun, Earl of Hereford. See note 81 following.

⁸⁰ Thomas and Fraser, *loc. cit.*

⁸¹ Bigot's and Bohun's, 25 Edw. I, 2 Inst., 528. These two men, earls, brought action in the form of a petition, asking to have the courts define how and in what manner they were bound to be employed in his majesty's army outside of the realm. It was decided in brief that they were bound to serve in such manner and form as was defined in the statutes. Coke declared that this decision did not weaken the sovereign's absolute authority in military matters. One can hardly agree with this view.

⁸² Henry IV, Fitzherb. 100, Protect. 100, was the case in which Justice Thirnung held that the subject was not compelled to go out of the kingdom for military service, except upon the payment of wages.

⁸³ Calvin's Case, Trin., 6 Jac. I. This contains Justice Coke's extreme views on the military obligation of the subject. He affirmed the unlimited and unrestricted right of the sovereign to control the military establishment and the bounden duty of the subject to serve within the kingdom or without "because of his Legiance" (Thomas and Fraser, *Reports of Sir Edw. Coke*, London, 1826. Vol. IV, pts. 7 and 8).

it is impossible to conclude correctly that the same restriction applies to service within the kingdom, yet it is possible to argue upon the basis of the Bigot and Bohun findings that the king's control of military service is not unlimited in all cases, but is subject at times to statutory regulations. And from this a precedent is established for the parliamentary claim to some part, at least, in the regulation of military service.

Contra, Coke holds the theory of the unlimited authority of the king in this phase of government, and contends that the decision in the above-named case of the earls does not weaken this position. Justice Thirnung, in the second case cited, held that service outside of the kingdom could only be had on the basis of a money wage. Selden interpreted this to mean that this sort of obligation was thereby placed upon a contractual basis. Coke refused to admit that this decision weakened his interpretation. Coke's decision in the third of these cases, rendered at a date later than the first two, has been referred to.⁸⁴

Sir William Staunford, writing upon the king's rights,⁸⁵ contends that prerogatives are above the law and not subject to regulation, or even restriction, by the Parliament. Thus, if supreme control of the military is one of the king's prerogatives, it cannot be subject in any way to parliamentary interference. Staunford states: "Now be it, this Parliament maketh no part of the King's prerogative, but long time before, it hath its beginning by order of the common law."⁸⁶ He contends that this has received parliamentary confirmation. "So said the Parliament of 17 Edw. II, he says, "and so stated Glanvill also."⁸⁷ Bracton, according to Staunford, also voiced the same opinion: *de custod. & Marit. dominorû; si aliquis haeres terram aliquam tenuerit de domino rege in capite, sive alios dños habuerit sive non, dominus rex aliis prefertur in custodia haeredis sive ipse at alius prius feoffatus fuerit vel posterius, quâ Rex pare no habet in regno suo.*⁸⁸

⁸⁴ See note 83 *supra*.

⁸⁵ Staunford, Sir William, "*Les Pleez del Corone*. London, 1607.

⁸⁶ *Ibid.*, cap. 1, fol. 6. See also Chapter IX, this book, on The Royal Prerogative, pp. 164 ff.

⁸⁷ *Ibid.*, quoting Glanvill (cap. 10) *Notandum quod si quis in capite de dño rege tenere debet, tunc eius custodia ad dominum Regē plene pertinet, sive alios dominos habere debeat ipse haeres sive non quia dñs rex nulli habere parē multo minus superiorē.*

⁸⁸ *Ibid.*, cap. 1, fol. 6.

The ship money case seemed to establish definitely the right of the crown to unlimited control in matters of defense.⁸⁹ However the arguments centered chiefly about the rights of the king when the country was in danger of attack from without, and this made the best possible set of facts upon which to ground the royal claims, as under those conditions it had always been admitted that the king's rights were practically unlimited. Though the case does not bear directly upon the plain question of the relative rights of sovereign and Parliament over the military establishment, yet some of the arguments offered are suggestive. St. John upheld unqualifiedly the supreme right of the crown. Sir George Crooke, one of the judges, though speaking decisively against the imposition of ship money, admitted the power of the king in cases of extremity, but said that in times of peace more legal courses should be followed. Sir Richard Hatton thought the supreme control of the army so definitely and inherently vested in the crown that no act of Parliament could take it away or limit it to any very considerable extent.⁹⁰

Such, then, was the situation in England when king and Parliament faced each other in the early summer of 1642 and engaged in their battle of legal arguments over the constitutionality of the Commission of Array. Many statutes had been passed bearing on various phases of the military obligation, a number of important cases had been before the courts and decisions therein rendered, and the subject had been discoursed upon by English jurists and lawyers. But, unfortunately, all of these historical precedents gave a color of legality to each opposing point of view. Crown lawyers and parliamentary advocates alike could search back in the legal antecedents of the question and find verification for their respective contentions. Neither side was likely to diminish its efforts until the matter was settled in some permanent form.

The king based his right to issue the Commission of Array upon the common law principle of the power of the sovereign to raise troops for the defense of the kingdom. And this right, it was contended, was inherent in the crown and could not be taken away by action of Parliament. In a proclamation issued

⁸⁹ Howell, *State Trials*, pp. 826-1306.

⁹⁰ *Ibid.*

from York in early June, 1642, he stated the following principles as establishing his right to issue the Commission of Array:

It [the Parliament] hath endeavored to raise Troops of Horse and other Forces . . . the power of raising Forces of Arms or levying of way for the defence of the kingdom, or otherwise, hath always belonged to Us and to Us only and therefore by the Statute of the 7th year of King Edward I,⁹¹ whereas there had been some variance betwixt him and some Great Lords of the Realm . . . it was agreed . . . that every man should come without Force and Armour . . . And that the power of raising troops is vested solely in the King, and this is so known and is, inseparably, a right of the Crown.⁹²

This proclamation then recites instances of rebellious nobles, who at divers times had arisen against the king and had been forced to recognize that the king alone could raise troops⁹³ and states that for anyone else to so do is treason. He also answers the parliamentary contentions that levying war against the king's authority and his evil councillors is not treason because it is not against the king's person, by citing the case of the Earl of Essex in the reign of Elizabeth, who was judged guilty under just such circumstances. In his proclamation he also refers to the decision in Calvin's case.⁹⁴

In another proclamation⁹⁵ at about the same time he offers much the same arguments and justifies the naming of lords lieutenants "as did Queen Elizabeth" and his granting them commissions [of Array], "which right is inherent in us from a time since the Great Charter of Henry III." The theories he is following, he declares, "have been agreed to by two learned judges, Sir Geo. Croke and Sir Rich. Hatton in Hamden's case." He contended that the Commission of Array was approved and the form fixed by Parliament in 5 Hen. IV, and "no exception was taken to the legality."⁹⁶

Charles pointed out that commissions had repeatedly been issued and were not discontinued until, by reason of the

⁹¹ This statute referred primarily to the denial of the right of those attending meetings of Parliament to bear arms thereto and only touched incidentally upon the subject of the king's power over the military. It was not a very good law for Charles to select.

⁹² *Eng. Hist. Tracts* (U. of M.), Vol. X (May-June, 1642).

⁹³ According to 25 Edw. III.

⁹⁴ For Calvin's Case; see Note 83, *supra*.

⁹⁵ Proc. of June 20, 1642; Rushworth, *Collections*, IV, 659 ff.

⁹⁶ *Ibid.*

Commissions of Lieutenancy, which in "substance contain the Power given by those Commissions of Array, they came to be of little use."⁹⁷

The king, then, looked to 7 Edw. I, which, while it did not bear directly upon the problem at issue, did contain a clear statement, incidentally, of the king's sole power over the military;⁹⁸ to 5 Hen. IV,⁹⁹ which seemed to establish a legalized form for the writ; and to the decisions in Calvin's case and Hampden's case, both containing the most extreme pronouncements of the king's position.¹⁰⁰ Indeed, a comparison of the Commission of Array issued on July 19, 1642, to the Marquis of Devon, and the authorized form of such a writ appended to 5 Hen. IV shows that the draughtsmen of the former must have used the latter as a model.¹⁰¹

Parliament, of course, tried to avoid the appearance of raising forces for use against the king. Such a course would seem treasonable on the face of it. On the contrary, they stated that their objects were "to protect the king, the true Protestant religion, and the liberty of the country."¹⁰²

The Parliament contended that 5 Hen. IV did not legalize the Commission of Array, but only "touched upon divers errors in the usual practice,"¹⁰³ and that the main object of the law was to protect the Commissioners of Array themselves from the consequences of certain feudal practices.¹⁰⁴

The main strength of the parliamentary position had to rest on the long line of historical precedents supporting the right of that body to at least share in the control and regulation of military affairs. From Anglo-Saxon times on, it was possible to show, by incident and statute, the gradual encroachment by that body upon the king's right to the sole control of the army. Successive laws had been passed limiting the authority of the sovereign and making it inconsistent for Charles's lawyers to maintain the extreme position which they assumed.

⁹⁷ Rushworth, *op. cit.*

⁹⁸ See note 92, *supra*.

⁹⁹ See p. 143, *supra*.

¹⁰⁰ See discussions of these two cases, pp. 142, 143.

¹⁰¹ Rushworth, *Collections*, V, 672, and 5 Hen. IV, *Stat. of Realm*.

¹⁰² Declaration of Parliament in *Eng. Hist. Tracts* (U. of M.), Vol. X.

¹⁰³ *Eng. Hist. Tracts* (U. of M.), Vol. XI.

¹⁰⁴ This contention is best set forth in "*Bellum Civile*," pub. by Somerset Record Society, Vol. 18 (1902). Cf. Rushworth, *Collections*, V, 655.

The supporters of the popular body claimed that whatever powers the king had he derived from Parliament, and then only in trust and confidence to be used for the protection, benefit, and security of the country;¹⁰⁵ also that "the crown had no further powers than Parliament grants and special acts provide, as Sir Edward Coke in his *Institutes on Magna Charta* (f. 528, 529), this Parliament, and Judges Crooke and Hatton have all said."¹⁰⁶

Use was then made of historical precedents to show that from the earliest times the people had exercised control over those selected to administer military affairs, and correspondingly that the kings in England had never been absolute in the exercise of this claimed prerogative.¹⁰⁷

It was very possible to point out, as was done, repeated and continued instances of the exercise of parliamentary authority in the control and administration of the military establishment in England, all of which would appear to weaken the king's claims to absolute power in these matters.¹⁰⁸

¹⁰⁵ Prynne, Wm., "The Sovereigne Power of Parliament," London, 1643, in *Gay Tracts* (Harv.), 211.528. Of course this represents the extreme view of the parliamentary interpretation.

¹⁰⁶ *Ibid.* Again a rather broad statement.

¹⁰⁷ Prynne, *op. cit.* This tract traced in great detail the history of the military power in England. It attempted to show that from earliest Anglo-Saxon times the tendency was to elect those who were to exercise extensive military power: "That, in ancient times," he says, "in and before Edward the Confessor and since, the 'Heretoches,' or Lord Lieutenants of every Province and County, who had the chief power of the militia and commanded them were elected by the Common Council of the Realm [the Parliament] and in every county, by the Freeholders in full Folkmote or County Court, as appears by the express words of King Edwards own Lawes, recorded by Mr. Lombard (*Archaion*, p. 135) recited and affirmed by Sir Edward Coke in his *Institutes on Magna Carta*, f. 174, 175." It is doubtful if this extreme contention could be proved, however.

¹⁰⁸ It was an established precedent that the Great Council and later Parliament, had nearly always been assembled when foreign wars were projected and its advice sought. The chronicles, such as those of Holinshed, Grafton, Fabian Hall, Stow, and Mathew Paris, all testify to this. Likewise administrative details had been legislated upon frequently, as affecting:

1. The sums of money to be raised
2. Methods of mustering and arraying as declared in 13 Edw. I, c. 6
3. How far each man shall walk when arrayed and whether or not they shall leave the county and at whose wage, as in 1 Edw. III, c. 7; 18 Edw. III, c. 8; 25 Edw. III, c. 8; 4 Hen. IV, c. 13; 19 Hen. VII, c. 1 and 2.
4. When and by whom, equipment shall be supplied, as well as privileges and protection given to those who go to war, as in 1 Hen. IV, c. 7; 2 Hen. IV, c. 21; 7 Hen. IV, c. 14; 9 Hen. V, c. 3
5. Distribution of prisoners, and use of ports, as in 1 Hen. VI, c. 5; 14

The parliamentary contentions seemed to have been thus established that the king of England was not clothed with a prerogative giving absolute and unlimited control of the military. If true, the Commission of Array could not legally issue.

On the other hand, were the parliamentary Militia Ordinances justifiable? The right of that body to legislate on affairs relating to war, the army, raising of troops, and similar matters was clear, but could it so legislate by itself, without the royal approval? Precedent seemed to answer this conclusively in the negative. It had always been recognized that Parliament consisted of the Commons, the Lords temporal, the Lords spiritual, and the sovereign acting together. The consent of all was necessary to pass a law.¹⁰⁹ Further, it had been formally enacted at least once that the king had the power of veto and this was generally recognized.¹¹⁰ But the parliamentary supporters, in the early summer of 1642, sought to get around these admitted principles of legislation by advancing the theory, *Salus Populi Suprema Lex est* and justified the Militia Ordinances, *necessitas causa & ad salutem populi*, even without the king's approval.¹¹¹ Thus popular argument sought support on grounds of necessity and *de jure publico*; the laws of nature *ne quovismodo periculetur republica*; "for the Parliament case is of so transcendent a nature," they said, "that *de facto* it may not, and *de jure* it ought not to be restrained by pettie and mortified statutes or laws."¹¹² The crown lawyers replied that to allow such theories would result in divesting

Hen. VII, c. 7; 13 Rich. II, c. 20; 14 Edw. IV, c. 10

6. Control of the sea, as in 2 Rich. II, c. 4 and 5; 15 Rich. II, c. 3

7. Building and repairing castles, as in 21 Rich. II, c. 18; 10 Hen. VI, c. 5; 4 Edw. IV, c. 1

8. Punishment of captains and soldiers for misdeeds, as in 2 Rich. II, c. 4; 18 Hen. VII, c. 18

9. Provisions for soldiers and care of injured, as in 35 Eliz., c. 4; 39 Eliz., c. 21; 43 Eliz., c. 3

10. Relations with the enemy, chiefly the Scots, as in 7 Rich. II, c. 16; 15 Rich. II, c. 7; 7 Hen. VII, c. 1

11. Guarding the frontier, as in 2 Hen. IV, c. 12; 1 Hen. V, c. 6 and 7; 3 Hen. V, c. 3

¹⁰⁹ It had been so declared in 2 Hen. V.

¹¹⁰ 2 Hen. V, " . . . both Houses of Parliament do acknowledge that it is of the King's regality to grant or deny such petitions as pleaseth him."

¹¹¹ Tract, "A New Plea for Parliament," London, 1642, *Gay Tracts* (Harv.), 211.263.

¹¹² Tract, "Animadversions Animadverted," London, 1642, *Gay Tracts* (Harv.), 1642.30.

the king of his authority and establish Parliament supreme, as it gave that body the right to act alone in extraordinary cases and also the right to decide in such unusual situations.

Another parliamentary contention placed the exercise of the prerogative upon a contractual basis. Answering the royal argument that the king by right had the sole power of ordering and disposing of the militia, one John Marsh wrote: "I conceive very clearly that the King by his Prerogative, warrantable by the laws of the land, hath the only power of disposing of the militia. The King is *caput Republicae* & *pater patriae*. . . . But here it is not to be understood that no prerogative can be severed. The King ought not only *regere*—to rule—but also *Protegere subditos suos*—so as between the subject and the crown this is *Duplex et reciprocum ligamen*."¹¹³ It was also said, *Quia sicut subditus regi tenetur ad obedientiam, ita subdito tenetur ad protectionem*, as 20 Hen. VII states; and Fortescue, Chapter XIII, carries out the idea:

Rex ad tutelam legis, corporum et bonorum erectus est, as is said in Acts of Parliament 10 Rich. II, 11 Rich. II, 14 Hen. VIII, 35 Hen. VIII, wherefore *Protectio trahit subjectionem et subjectio protectionem*. Protection and legiance are relative; a man outlawed is out of the protection of the King and is said to have *Caput Lupinum* and any man may kill him. So if a king withdraws his protection, the subject may withhold obedience.¹¹⁴

Here was offered justification for refusal to obey the king: the latter had voided his contract by not rendering protection, and the subject did not have longer to render "legiance." "Denying to protect his subjects is plain refusal to be ruled by law . . . [which] makes him [the king] a Tyrant and not a King," said Marsh.¹¹⁵

The parliamentary adherents were willing to concede that if the king is bound to protect *per mare, per terras*, he must have control of the means with which to so do, viz., the army and navy. Bracton had said, *de acquirendo rerum dominio*, the king *habet eaqua sunt pacis ut populus sibi traditus in pace fileat et quiescat*,¹¹⁶ and that, if the king had the sole power

¹¹³ Tract, "An Argument . . . Concerning the Militia" by John Marsh, London, 1642, *Gay Tracts* (Harv.), 1642.74.

¹¹⁴ Marsh, John, *op. cit.*

¹¹⁵ *Ibid.*

¹¹⁶ Bracton, quoted by Marsh, *op. cit.*

to declare and end war, he must have the lesser power, the control of the militia, for *qui majora concedit minora non denegabit*.¹¹⁷ But, having thus admitted the right of the king to control the militia, they then proceeded to argue that under unusual conditions he may be deprived of this right, *illud quod alias licitum non est necessitas facit licitum et necessitas inducit privilegium quod jure privatur*, as Marsh again quoted Bracton.¹¹⁸ "As, for example, a prisoner may break his prison if the prison is on fire, because Law of Reason is higher than the Statute, or, as in 14 Hen. VII it was stated that Jurors were not to depart until a verdict, but fear of a great tempest led them so to do and it was held alright, and yet again to save my own life I may kill another," argued Marsh.¹¹⁹

So again, while *de chartis regis et factis regum, non debent, nec possunt justiciarii nec privatae personae disturbare*, yet the king's powers may under extraordinary conditions be severed from him and even the prerogative must give way for the good of the kingdom and the preserving of his crown, the parliamentarians claimed. And while it was a rule of law that the king can do no wrong and Bracton had supported this, *Nihil aliud potest Rex in terris cum fit. Dei minister et vicarius nisi id solum quod de jure potest, nec quod principi placet, legis habet vigorem*.¹²⁰

Does the last part mean that the king ought to subscribe to the law? Marsh contended, as expressing the position of the position of the opponents of the king, "that the King cannot do a wrong, yet neither will his Prerogative be any warrant to him to do injurie to another."¹²¹ He also quoted Bracton further that the king *Parem non habet in regno, nec superiorem*, but Bracton also said, *Rex non debet esse sub homine sed sub Deo et sub lege*, and also *Rex habet superiorem Deum scilicet, item legem per quam factus est Rex, item Curiam suam, viz., Comites, Barones, etc., and quod non est Rex ubi dominatur voluntas, non Lex*.¹²² The conclusion of all of this seems fairly to be that law and the two Houses of Parliament are above the king and that the king is no king if he does not submit to the law, and that reason and justice

¹¹⁷ Marsh, *op. cit.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ Bracton, quoted by Marsh, *op. cit.*, pp. 10-11.

¹²¹ Marsh, *op. cit.*, p. 11.

¹²² *Ibid.*

justify the Parliament in assuming a supreme position under certain unusual and extraordinary conditions. This appeared to be the strongest contention in support of the side opposed to Charles.

But were there "extraordinary conditions" and such imminent dangers in the summer of 1642 as to render legal acts that were otherwise illegal? And could Parliament rightly assume itself to be the sole judge of such a situation? That body contended that the dangers were real, *et talis metus qui cadere potest in virum constantem*, as Lord Coke had said.¹²³ It said that there was a *commune incendium*, *ab intra*, from the terribleness of the Irish situation, the fear of Papists and other ill-affected persons, the actions of the king, and *ab extra*, in the rumors of invasions. And the Parliament claimed that it had by precedent been established as the body to judge of the existence, or non-existence, of such "unusual conditions."¹²⁴

Another point remains to be considered. While Parliament might so judge and while Parliament might so act, was it not true as the crown lawyers contended that by Parliament was meant the three parts, the Commons, the Lords, and the King, and that the first two could not function without the last? It had been so decided.¹²⁵ But the Parliament replied to this that it was not right to allow the king to destroy Parliament simply by leaving it, also that he was not absent in law even though he might be a distance away, and finally, that under the same extraordinary conditions it was legal for the Lords and Commons to act alone if it was for the good of the country.

In substance the parliamentary position was that the king held his office and his powers in trust, that he had made a breach of this trust by denying protection, by not supporting the laws and privileges of Parliament, by not endeavoring to maintain peace, and by denying justice. He had refused to be bound by the law, and, though he is not *sub homine*, yet he is *sub lege*. The oath of allegiance of the subject did not

¹²³ Coke, *Institutes*, fol. 253; quoted by Marsh, *op. cit.*, p. 11.

¹²⁴ Marsh, *op. cit.*, citing 9 Rep. (Rep. 106 b) and 7 a., 6 Rep. (Rep. 27 b) and in Pl. Com., fol. 398, all claiming that Parliament was a court of decision in such matters.

¹²⁵ In 4 Hen. VII there was an act made by the king and Lords, without the Commons being referred to, and the judge held that it was not an act of Parliament. Also cf. 7 Hen. VII and 2 Hen. VII.

bind a man to defend the privileges of the king even against, or to the destruction of, the public good, because *pereant privilegia Regis ne pereat Regnum*. Extraordinary conditions had arisen in the state, and these justified the Parliament in acting alone, if necessary, to prevent the destruction of the state. This "law of reason," as they termed it, was higher than any other law or custom, and upon it they based their case and appealed to the country in the Militia Ordinances.

CHAPTER IX

ALLEGIANCE AND THE ROYAL PREROGATIVE

Pereant privilegia Regis, ne pereat Regnum.

Qui Legum non est solus conditor, destructor non est.

THE problem of the king's control of the military establishment and the legality of the Commissions of Array is definitely bound up with an analysis of the meaning of allegiance and the rights rather uncertainly defined as the royal prerogatives.¹ The reciprocal obligation of the subject to serve and of the king to protect was constantly referred to in seventeenth century discussions. "The king ought not only *regere*, but also *Protegere subditos suos*," wrote one; "there is, between subject and crown, *duplex et reciprocum ligamen*."² Fortescue wrote, *Rex ad tutelam legis, corporum et Bonorum erectus est*.³ A Tudor statute read, *Quia sicut subditus regi tenetur ad obedientiam, ita Rex subdito tenetur ad protectionem*.⁴ Out of such theories arose the mutual duty between sovereign and those under him in times when protection was the thing chiefly desired by the one and dispensed by the other.

Prerogative rights were essential to the proper fulfilling of this duty. The privileges so designated extended into many fields, but only in so far as they are related to the military are we concerned with them. "Protection" and "legiance" were considered in close relationship—*protectio trahit subjectionem et subjectio protectionem*. The king was bound to guard his subjects, *per mare, per terras*, and from this it was said that he must have control of the means to afford protection. Bracton wrote, *de acquirendo rerum dominio* and means that when he says that the king *habet eaque sunt pacis*

¹ *Vide* Chapter VIII, *supra*; there the matter of legality is treated purely in the light of the historical evolution of the settlement of the problem of defense; Chapter IX treats of the theoretical phase of the subject, military obligations and the asserted rights of the crown in respect thereto.

² Marsh, John, Contemporary Tract, 1642: *Gay Tracts* (Harv.), 1642.74.

³ Fortescue, cap. 13.

⁴ 20 Hen. VII.

*ut populus sibi traditus in pace fileat et quiescat.*⁵ The king's sole right to declare war and make peace might give him control of the lesser right to order the military, for *qui majora concedit, minora non denegabit.*

Prerogative rights seem to have arisen out of the fiction of an ideal king, a fiction that developed rapidly in a certain period of European history due to a variety of causes. This theory spread into England but seems to have been subject to modifications there, as were so many of the continental ideas. Blackstone concluded that the laws of England attribute to the sovereign absolute perfection, immortality, legal ubiquity; that he is incapable of doing any wrong, that he never dies, that he is present in every court of justice in the land.⁶ It was also said that the whole of England belonged the king,⁷ that the government cannot exist for a moment without the king,⁸ and that his fiat makes the laws.⁹

Sir William Staunford in an exposition on the king's prerogative, gathered from Fitzherbert and others, debates the question of origin.¹⁰ He states the practical necessity of clothing the sovereign with superior privileges and concludes, "for which cause the laws do attribute unto him all honour, dignity, prerogative and pre-eminence."¹¹ A declaration had been made by the Parliament in the reign of Edward II conceding and defining certain prerogative rights.¹² "But," writes Sir William, "this parliament maketh no part of the king's prerogative, but a long time before it had its origin by the order of the common law."¹³ With this Glanvill and Bracton agree.¹⁴ The

⁵ Bracton, quoted by Marsh, *op. cit.*

⁶ Blackstone, I, 246, 249, 251, 270; III, 23. Also *vide* Howell, *State Trials*, II, 598.

⁷ Y. B., 24 Edw. III, fol. 65 b.

⁸ Attorney-General's Speech in Hardy's Trial, Howell, *op. cit.*, xxlv, 246.

⁹ *Que le roy fist les leis par assent dex peres et de la commune et non pas les peres et la commune.* Argument before King's Bench, Y. B., 23 Edw. III, f. 3, b.

¹⁰ Staunford, Sir William, *An Exposition of the King's Prerogative*. London, 1567. Most of this work deals with the king's prerogative rights in lands, the right to control lands, wards, marriages, property of deceased tenants, the right to first fruits; forms of action in such proceedings are also dealt with.

¹¹ *Ibid.*, fol. 5.

¹² 17 Edw. II, commented upon by Staunford, *op. cit.*

¹³ Staunford, *op. cit.*, fol. 5.

¹⁴ *Vide supra*, p 154, where the question of the legality of the commissions is discussed. An attempt is made not to repeat material used in that chapter, but in a few instances evidence bears on both legality and allegiance.

idea of extensive regal rights to be exercised exclusively by the sovereign came into England from the continent and was traceable back to the Roman theories. Such prerogative rights as were distinctly English in origin seem to be paternal; the king as protector "of folkes that were destraughte" is emphasized again and again.¹⁵

The theory of Roman legal origins fits in with the commonly accepted views upon the rise and development of absolute monarchy.¹⁶ Among the Germanic peoples the title of king conveyed no idea of unlimited and unrestricted rights and privileges.¹⁷ The church encouraged the growth of royal authority, but outdid the Romans in introducing the divine right theory, whereas the emperors claimed only the Roman people as the fountain of their powers. And so, under somewhat the same conditions and subject to somewhat the same influences, arose the monarchy in England and with it the body of prerogative rights, erected upon the Anglo-Saxon paternalistic interpretation of the position of the king. But that country, submissive neither to continental political theories on the one hand nor to Roman theology on the other, very early placed definite limitations upon the inherent rights of the crown. This was often done, it is true, by legal fictions rather than by a direct denial of these apparently fundamental theories of the ideal kingship. The king is supreme and the sole legislator, but he cannot enact laws or alter them without the consent of the Parliament, *qui Legum non est solus conditor, destructor non est*; he possesses the whole soil of England but he cannot enter upon, or seize, his possessions if he thereby deprives a man of his ownership, except through due process; he is supreme judge and is present in all the courts of the land, but he must function through the duly organized judicial system. All of these things illustrate the early conflict between the ideal and the real king in England. And might not the same

¹⁵ Staunford, *op. cit.*, fol. 37. Chapter X of this writer's work is entirely upon the rights of the king as guardian of those who cannot care for themselves. *Vide* Holdsworth, *History of Eng. Law* (New Ed.), IX, pp. 3 ff.

¹⁶ Allen, John, *Inquiry on the Rise and Growth of the Royal Prerogative in England*. London, 1849.

¹⁷ *Ibid.*, p. 12. The German tribes had kings; (Tacitus, *De Mor. Germ.*, 7, 10, 11, 12, 25, *et cetera*) but their power was not unlimited and unrestricted as Tacitus says (*Ibid.*, 7), *nec regibus infinita aut libera potestas*; if they governed it was *auctoritate suadendi magis quam jubendi potestate* (*Ibid.*, 11).

thing have taken place with regard to the military? Might it not have been true that the theories upon which the idea of the absolute monarch was grounded included prerogative rights with regard to the raising of troops and the exclusive control thereof? Such were the powers of the ideal king. But the real king came to be restricted in his exclusive control of military affairs. These limitations seem to be numerous from the fourteenth century on. The control of the defense of the state might, as Charles I phrased it, be "one of the brightest jewels in the crown," but it certainly had suffered from tarnish as a result of the continual meddling by the Parliament. That body had repeatedly passed acts pertaining to the ordering of the Military.¹⁸ The ideal king in England might have issued the Commissions of Array in the critical moments of 1642 and expected them to be obeyed, but the people were more familiar with the real king in his position of a limited sovereign only.

Would a military order embodied in a Commission of Lord Lieutenancy have succeeded better? The Tudor kings had made extensive use of this form of military summons and had apparently encountered little opposition in its use.¹⁹ Charles I evidently judged the two commissions to be similar. In a proclamation issued June 20, 1642, he declared: "Commissions of Array have been frequently issued since then [i.e., since I Hen. IV], and were not discontinued till, by reason of the Commission of Lieutenancy [which contained in substance the powers given by the Commissions of Array], they became of little use."²⁰ The Commissions of Lord Lieutenancy would have fared little better. The constitutional issue involved in their use was the same as that of the Commission of Array. Both were a remnant of the power of the ideal king, and, while temporarily revived and made successful by Tudor popularity, England had outworn that theory long since. Prerogative rights, whatever their origin and strength in earlier times, had been successfully made the subject of parliamentary encroachment in many fields, most of all in that of the military.

¹⁸ *Vide* Chap. VIII, *supra*, especially p. 158, note 108.

¹⁹ For a complete discussion of the lords lieutenants, see Gladys Scott Thomson, *Lords Lieutenants in the Sixteenth Century*.

²⁰ Proclamation June 20, 1642. Rushworth, *Collections*, IV, 659 ff.

Allegiance, likewise, had undergone various modifications. Unqualified and unregulated military service, even for those who held upon that basis, had never been considered a part of "legiance" in England. Service other than that based upon the military tenure had been early, and later was consistently, the subject of parliamentary regulation. Selden held that even the calling of the knights was in its nature only ministerial and subservient to that power which levied the war.²¹ He qualified this position in part by saying that the king, unlimited, may levy war in time of "known danger from without."²² Coke was convinced of the practically unlimited power of the king in military matters and so expressed himself in Calvin's case.²³ Charles I cited Calvin's case and the definition of allegiance contained therein in upholding his unrestricted military power.²⁴ He asserted that the obligation was "due unto the natural person of the Prince" and not to his crown or kingdom.²⁵ In the reign of Edward II a certain Hugh Spencer had argued his case upon the opposite grounds, that allegiance was due "more to the King's Crown, that is, to the Kingdom, than to his person"; it was decided by the Parliament that such reasoning was not good, and Spencer was condemned and banished.²⁶ But that was in the reign of Edward II.

Matthew Hale divided allegiance into, first, original (virtual, or implied), and second, expressed (declared by oath or promise).²⁷ The virtual, original, or implied is the natural obligation owed by the subject antecedent to any express promises, oaths, or engagements, *aliance et la loyaulte de tous ses homes de toute la contree, par quoy ils sont tenus a lui donner conseil et ayde de leurs propres corps contre toutes personnes qui peuvent vivre et mourir et soy gardes de lui nuyre en toutes choses ne de soustenir in aulcune chose la partie de ceulx qui parlent*

²¹ Selden, John, *Historical Discourse Upon the Laws of England* (London, 1647), Nathaniel Bacon, ed. These varying views and interpretations on the meaning of allegiance are dealt with in Chapter VIII, *supra*, especially pp. 147 ff.

²² Selden, *op. cit.*, p. 299.

²³ Coke in Calvin's case, Trin., 6 Jac. 1. Also *vide* p. 152, and p. 153, *supra*, note 83.

²⁴ King's Proclamation in Tract, "Proclamation, etc." *Thomason Tracts* (Brit. Mus.), E 1945, No. 3.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Hale, Matthew, *Placitorum Coronae*, I, 61.

luy.²⁸ This source seems to be the one from which much of the common law idea of allegiance was drawn. Hale quotes the tenor of the oath from Fleta, as follows: *Hoc audite, circumstantes, quod fidem regi portabo de vita, et arma contra ipsum non portabo, sic me Deus, etc.*²⁹ The subject was bound to his sovereign by an intrinsic allegiance. Levying war without the king's permission is, of course, forbidden; the *jus gladii*, both military and civil, is one of the *jura majestatis*, as the same writer concludes.³⁰ The indictment for violations of the law forbidding the levying of private warfare always ended, *contra pacem domini regis*. Levying war was a form of high treason, *ou si home levy guerre countree nostre seigneur le roy en son realme*.³¹ The question of precisely what constituted the levying of war was one of fact, but was commonly expressed by the words, *more guerreino arraiti*.³²

The practice of commutation of services either through scutage or escuage arose in the latter part of the twelfth and the early part of the thirteenth century.³³ A discussion of each involves the theory of allegiance. Coke, with his usual emphasis upon the strength of the military obligation, wrote: "He that holdeth by it, if the King made a royal voyage out of the realm, he must go with him and so continue after the forty days."³⁴ Continuing, "a voyage royal is not only when the king goeth to war, but, as Littleton hath said, also when his lieutenant, or deputy, goeth."³⁵ Escuage required service out of the realm, which was the reason for its being called *servitium forinsecum*. Whether it applied to all foreign countries, or to particular ones, is disputed.³⁶ And now is to be noted the method of assessing the fine. The practice is first seen in the reign of Edward II, and the fine was imposed by action of the Parliament.³⁷ "After

²⁸ *Coutumes de Normandie*, cap. 13, quoted by Hale, *op. cit.*, I, 61.

²⁹ Fleta, *Lib. III*, cap. 16, sec. 22, quoted by Hale, *op. cit.*, I, 63.

³⁰ Hale, *op. cit.*, I, 130.

³¹ *Ibid.*, I, 130.

³² *Ibid.*, I, 130.

³³ For a discussion of scutage, see Chapter II, *supra*, pp. 8 ff. Cf. Baldwin, J. F., *Scutage in England*, and Pollock and Maitland, *English Law*, pp. 226 ff.

³⁴ Coke, *Institutes of the Laws of England, or A Commentary Upon Littleton*, *Lib. I*, xlvi, and *Lib. II*, cap. 3.

³⁵ Coke, *op. cit.*, 69 b.

³⁶ Littleton mentioned only Scotland, but Coke added Wales and thought it might also apply to Ireland, Gascony, and Poitou. Cf. Coke, *op. cit.*, 74 a, sec. 102, note 1.

³⁷ Coke, *op. cit.*, *Lib. I*, 71 a, note.

the voyage royall, etc., it is commonly said that, by authority of Parliament, the escuage shall be assessed," said Coke.³⁸ With other questions in regard to escuage we are not here concerned; whether or not it was a separate form of tenure, or a mere incident of tenure similar to homage and fealty, and other such questions that have arisen need not be taken up.³⁹ But this does appear from the practice: the broad and indefinite term "allegiance" could not be made to apply in actual usage to all features of the military obligation. The unlimited duty of the subject to serve at home and abroad, which Coke tried to support, was early subjected to restrictions and modifications, and while these applied to feudal customs primarily, they influenced the whole field of duty of the subject to go to war.

Prerogative rights involve the divine right theory and the various interpretations thereof.⁴⁰ Both are bound up with the development of sovereignty in England. Blackstone's expositions concerning the "ideal king"⁴¹ came at a late date. To attribute any clearly defined theory of sovereignty to England in the Middle Ages (at least until the fourteenth century) is a false and unsupportable assumption. In the time of Bracton even, a developed state and legislative activity, both essential to the rise of the idea of sovereignty, were lacking. The body of the English law was as yet the sum total of the customs of the race, and customary law weakens the practical application, at least, of Austinian doctrines.⁴² From the thirteenth century on, sovereignty gains ground.⁴³ The growth of parliamentary powers was accompanied by an effort to increase the scope of the royal prerogative. The late fourteenth century witnessed a remarkable growth in the idea of a supreme king, developed in part out of the growing resistance to papal and imperial claims alike. Richard II speaks of himself as *Entier Emperour de son Roialme*.⁴⁴ Another writes, *Un chacum Roy est chief*

³⁸ *Ibid.*, 72 b, sec. 97.

³⁹ Madox, *History of the Exchequer*, fol. ed., p. 469, thought it a mere incident of tenure. Littleton's views appear uncertain. Cf. Blackstone, *Comm.*, 2, 5th ed., p. 75.

⁴⁰ Figgis, J. N., *The Divine Right of Kings* is the standard work.

⁴¹ *Ibid.*, p. 164, *supra*.

⁴² Cf. Maine, *Early History of Institutions*, Lectures XII, XIII.

⁴³ Stubbs, *Const. Hist.*, II, secs. 247-73 "the theory of sovereignty held by Henry III is far more definite than that of Henry II; and that of Richard II, than that of Edward I."

⁴⁴ Rot. Parl., III, 343.

de son royaume, et Emperour de son Empire.⁴⁵ The Statute of Appeals states, "this realm of England is an empire."⁴⁶

Wycliffe's *De Officio Regis* resisted claims to papal supremacy by exalting the position of the king. In this work he gave support to the exaggerated claims of Richard II. Wycliffe said that the king was above the law; his obedience is voluntary and not compulsory; the king is *solutus legibus* and subject not to positive law but only to law which is moral or divine.⁴⁷ Richard II was intense in his zeal for guarding his office and preserving his prerogatives; he exercised powers unlimited and sought to "create a permanent despotism."⁴⁸ The deep importance of prerogative rights is shown by the fact in such a program of their gradual increase, strengthening, and preservation. Absolutism, unrestricted, had for its bulwark prerogative rights; their invasion meant its breakdown; their maintenance, unimpaired, spelled its triumph. Bracton supplied the magazine from which the exponents of the absolute idea drew their ammunition, just as did the royalist supporters of the seventeenth century. Nevertheless, this writer was often misinterpreted, due to the inaccuracies of an unscientific age or to deliberate desire to misrepresent. Bracton had called the king God's vicar;⁴⁹ he had said that all persons in the realm are under him and that he is under none but God; that he has no peer; and that if he break the law none of his subjects may punish him.⁵⁰ Britton had written in a similar vein.⁵¹ But Bracton had also said that the king was subject to the law.⁵² It is hardly possible to establish that England was thought of as an unrestricted monarchy in the late Middle Ages.⁵³ It was the oft-repeated idea of the conflict between the "ideal and the real king"; the lawyers

⁴⁵ Raoul of Praelles, Goldast, I, 51; quoted by Figgis, *op. cit.*, 43, note 1.

⁴⁶ Figgis, *op. cit.*, 43, note 3, who also explains that the idea had been that sovereignty in England (and in other kingdoms) had been acquired by appropriation of rights from the empire.

⁴⁷ *De Officio Regis*, 93 ff., quoted by Figgis, *op. cit.*, p. 69, note 7.

⁴⁸ Figgis, *op. cit.*, p. 76.

⁴⁹ Bracton, *De Legibus Angliae*, fol. 1 b.

⁵⁰ *Ibid.*, fol. 5 b., 6, 639.

⁵¹ Britton had gone so far as to state that the whole common law had emanated from royal authority (I, i); that the king's regality is inalienable (I, 221), as, *Rois aussi ne porront rien aliener les droits de leur couronne ne de leur reaulte, que ne soit repellable par leur successeurs*. Quoted by Figgis, *op. cit.* (2d ed.), 34, note 9.

⁵² Bracton, f. 5 b., 34. Also cf. Figgis, *op. cit.*, Chap. II.

⁵³ *Ibid.*, Chapter II.

might surround him with regal rights and impute to him unlimited and illimitable powers, but in practice his prerogative domain was being constantly invaded. The idea of a limited monarchy was not comprehended at this time; political theory did not include it, and legal minds could not interpret it. It was a direct contradiction of the divine-right idea. Fortescue came the closest to defining the situation in the Lancastrian period; he terms it a "mixed monarchy."⁵⁴ Yet it failed in these years.

The contest between the rival theories of empire and papacy, which had raged on the continent, influenced English doctrines. The arguments of William of Ockham (an Englishman and an Oxonian), Marsiglio of Padua in his *Defensor Pacis*, Dante in his *De Monarchia*, as well as in the bull *Unam Sanctam* of Boniface VIII, had turned partly about the character of "perfect sovereignty."⁵⁵ England had not neglected the controversy. It resisted the claims of the empire by assertions that England itself was an empire; it put forth the divine-right idea in opposition to papal claims and, to make such theories stronger, declared that *potestas imperialis est immediate a Deo, non a Papa*. In the period from the fourteenth to the sixteenth century there was need to support the English government against the pope, and a theory was needed that must be an assertion of divine right; obedience must be demanded under pain of damnation; resistance must be a sin. The Reformation aided this, and the height was reached in the reign of Henry VIII. The Act of 1539 established complete sovereignty in his person.⁵⁶ The Stuart period was to witness a breakdown of this sovereignty and a vogue for doctrines historical and utilitarian rather than theological, together with a rise of the natural-rights principle propounded by Locke, "which," says Figgis, "is only the Divine Right of Kings in a disguised form."⁵⁷ Sovereignty was a prerogative right, and its varying interpretations in the late Middle Ages reflect the tendencies of the respective periods.

⁵⁴ Fortescue, *De Laudibus Legum Angliae*; quoted by Figgis, *op. cit.*, 82.

⁵⁵ Figgis, *op. cit.*, Chap. III. Cf. Poole, *Illustrations of Mediaeval Thought*.

⁵⁶ 31 Hen. VIII, c. 8. It is thus described by the Bishop of Oxford: "Here was a *lex regia*, indeed; a dictatorship, which with all conceivable limitations left the 'king master and only master,' in his own house." Stubbs, *Lectures on Mediaeval and Modern History*, 303; quoted by Figgis, *op. cit.*, p. 90, note 1.

⁵⁷ Figgis, *op. cit.*, p. 176.

Many and varied were the claimed prerogative rights at different times in English history. As has been stated, they arose out of the fiction of an ideal king.⁵⁸ They were privileges imputed to the monarch to strengthen his position in the state, not always through the selfish interests of a favored group, but at times with an honest conviction that it was essential to the safety of the country to set up an authority above the law and circumscribe it with unassailable rights. Such rights were never clearly defined. As applying to the Commission of Array, they involved the power of the crown to control the military establishment. But their origin and ramifications are uncertain.

John Allen gives credence to a statement of one of the judges in the reign of Edward III, who said that the king could be sued.⁵⁹ Bracton denied this.⁶⁰ In *Placita Anglo-Normannica* Bigelow sides with Bracton, though admitting that the claimed rights of the king were often brought into question in the courts, and he cites cases exemplifying this, as also instances in which the claimant was successful.⁶¹ Coke has said: "The King's Prerogative is a part of the Law of the Kingdom and a supreme part, for the Prerogative is highly tendered and respected of the law, yet it hath bounds set unto it by the Laws of England."⁶² Earliest references to the powers claimed under this heading appear to be in connection with the king's rights in lands, alienation, tenants-in-chief, and the like.⁶³ The *Praerogativa Regis*, a document of uncertain date and of almost equally uncertain content, discussed the rights of the king in these respects as early possibly as the reign of Edward I.⁶⁴ Glanvill and Bracton had dealt with the prerogative right, and both had expressed themselves strongly concerning it; their

⁵⁸ *Vide supra*, Chap. IX, p. 164.

⁵⁹ *Year Book*, 24 Edw. III, c. 55, cited by Allen, John, in *The Royal Prerogative*.

⁶⁰ Bracton, 5 b, 171 b; quoted by Allen, *op. cit.*, pp. 94-97.

⁶¹ Bigelow, M. Madison, *Placita Anglo-Normannica*. London, 1879. Introduction, xxxiii, and xxxiv, note 2. Cf. Holdsworth, *op. cit.*

⁶² Coke, Sir Edward, in speech, "The Sovereign's Prerogative," as reported in *Tract* 709, page 39 (British Museum).

⁶³ *Vide* Maitland in *Eng. Hist. Rev.*, Vol. VI (April, 1891), where these early rights in land are discussed.

⁶⁴ This document may have been a statute, a tract, or a commentary written by some unknown lawyer. Dr. F. E. Henderson places it in the reign of Henry III, *Eng. Hist. Rev.*, V, 753, October, 1890. Cf. Maitland, *ibid.*, VI, 368.

thought was that it had arisen out of the common law and that it was not subject to limitation by the Parliament.⁶⁵ Britton, according to Staunford, was even more emphatic in his assertions.⁶⁶ But in all of these early references to the subject, the king's rights in lands seem to occupy chief attention.⁶⁷

The mooted point as to whether prerogative rights arose in England out of the common law or by statute still remains. The enactment of 17 Edw. II implies the latter interpretation. Staunford, grounding his ideas upon Glanvill, Bracton, and Britton, held that the rights existed prior to statutory regulation. Fitzherbert in his *Natura Brevium* believes that legal enactments are the bases of the claims.⁶⁸ Staunford wrote: "For mine own opinion, I do not see by all these statutes but that the king hath his prerogative by order of the Common Law, at least wise, as the Common Law hath taken since the time of Edward I."⁶⁹

Accepting these views, it is still possible to point out that prerogative rights had in actual practice been frequently modified by statutory action, especially in regard to the military establishment.⁷⁰ Staunford, who was loath to admit the legality of such encroachment, agreed that at times this action had changed prerogative rights.⁷¹ In fine, the insistence upon *salus populi* was repeatedly and successfully made in England. *Salus populi, non majestas imperii*, is the chief object and aim of government as one writer had said.⁷² All claims to royal rights and all demands made pursuant to these under the head of allegiance, were thus circumscribed. "It has been said that the king is *principium, caput et finis parlamenti*," said one, in 1649, voicing more or less the opinion of the period; "the king is *principium*, the king is *caput*, but that the king is *finis*, I deny, that is, *finis integerant totales parlamenti*, for *finis*, or *causa finis*, is *causa propter quod*—the cause for which the thing is ordained,

⁶⁵ *Vide, supra*, p. 154 and note 87.

⁶⁶ Britton, in Fitzherbert, *Prerogative*, pp. 25-26, as quoted by Staunford, *An Exposition*, etc., fol. 6.

⁶⁷ Staunford's discussion is almost entirely devoted to this phase of the subject.

⁶⁸ Fitzherbert, *Natura Brevium*, fol. 226, quoted by Staunford, *op. cit.*, who comments that Fitzherbert attempted this argument "under coercion."

⁶⁹ Staunford, *op. cit.*, fol. 30.

⁷⁰ *Vide*, Chap. VIII, *supra*, especially p. 158, note 108.

⁷¹ Staunford, *op. cit.*, Chap. IX, fol. 33. Coke had so stated.

⁷² Ball, William, in *Somers Tracts*, Brit. Mus., V., 132 ff.

and certainly *salus populi* is *suprema lex*—and the principal end of parliamentary conventions.”⁷³

In conclusion, it would appear that the duty called allegiance had bound the subject to the crown under certain obligations, the military obligation among others, and that the prerogative right had allowed to the sovereign practically unlimited control over this in early times. Hence it would seem that the defense of the realm rested through necessity with the king to protect the subjects against foreign enemies, *qui ad tutelam corporis et bonorum erectus est*.⁷⁴ To accomplish this lands were granted to be held in knight's service and in escuage, or castle guard, and the king's rights would extend to issuing a feudal summons, a Commission of Array, compelling the fulfillment of these obligations. Those persons not affected by such conditions (and as the strength of the feudal ties weakened, these became more and more numerous), could not be legally bound under the military obligation feature of “legiance.” An effort was made to reach out and bring these in, as it were, by an extension of prerogative rights. Allegiance and the prerogative had had full recognition in England, but their interpretation and their extent had been made the subject of frequent parliamentary action. The type of military service due from those whose status in this respect was not defined by the nature of their holdings, had early been made the subject of regulation by the Parliament. Arms had always been imposed (those regulated by tenures excepted, of course) by action of some legislative body even in Anglo-Saxon times,⁷⁵ and repeatedly after the conquest.⁷⁶ Allegiance in England around 1642 did not mean unlimited military service to the sovereign, nor did any accurate line of precedent extend prerogative rights to include exclusive control of the service due.

⁷³ *Ibid.*, p. 137. Blackstone has said that the constituent parts of the Parliament are “the king's majesty sitting there in his royal capacity and the three estates of the realm” (Blackstone, Lewis, ed., I, 153). And the phrase here referred to came from the great corporation, or body politic of the kingdom (4 Inst. 1, 2; Stat. Eliz.), of which the king is said to be ‘caput, principium et finis’” (Blackstone, Lewis, *op. cit.*, p. 153).

⁷⁴ Fortescue, *De Laudibus Legum Angliae*, cap. 13. Also cf. “Mirrors of Justice,” p. 8, in the new print. Hobbes, *Leviathan*, argued that the monarch who cannot protect his subjects loses the right to their allegiance.

⁷⁵ Lamb, *Saxon Lawes*, fol. 120, 125, 135.

⁷⁶ Stat. of Westminster, 1 Edw. II, c. 7

Stat. of Winchester, 13 Edw. I

33 Henry VIII, c. 5

4 & 5 Phil. and Mary, c. 2, etc.

CHAPTER X

CONCLUSION

THE history of the Commission of Array in England from the thirteenth to the seventeenth century may be used to accomplish the following purposes:

1. To explain the use of the writ itself as a commission of some importance and about which relatively little has been known

2. To develop the military history of England in its relation to constitutional progress

3. To deal with the subject of nationalism, its origin and growth, as reflected in the changes in the military establishment

4. To treat of that indefinite but very important topic of the mutual relationship, duties, obligations, and responsibilities between sovereign and subject under such headings as allegiance, the royal prerogative, and parliamentary rights in respect to these

5. To emphasize the importance of the local aspects of the Civil Wars in England as illustrated in the contest between Commissions of Array and parliamentary Militia Ordinances, and thus to show that the outcome of the major conflicts was determined by the results of these many local rivalries.

The study of the Commission of Array in English history is the study of a practically hitherto neglected, but important writ. While relating primarily to the military establishment, its influences were by no means restricted to that side of history alone. In fact, it is quite as much a study as the legal and constitutional development. Its purely military phase has been recounted only in so far as it has shaped the course of the development of the English state in other ways.

A study of the use of the writ presents an interesting problem in the field of research, because of the difficulties attendant upon investigation. The Commission of Array was rarely

classified properly, and the record of it may be found nearly anywhere in the various groups of material relating to the late mediæval period. Beginning as a remnant of the old feudal commission to array and muster feudal tenants, it became under English influences an instrument in the hands of the sovereign to secure and maintain absolute control of the military establishment. Moreover, in the history of the Commission of Array may be seen not only the various changes which took place in England's military development, but also how very greatly this development shaped and influenced the course of other affairs in the state, notably in the constitutional field. In no other country perhaps have military affairs so affected institutional changes as in England. And the use of the writ under consideration illustrates this. The failure of the feudal influences to develop a military caste in England necessitated the sovereign's looking to other sources for his support. The difficulties thus encountered laid him open to successful attack, first, by the barons, and later by the Parliament. Ambitions in foreign wars required men and money, and these inevitably brought encroachments upon the king's rights and powers.

Had the sovereign of England been able to secure obedience to his formal orders to array and muster men through the commissions, he would have been thus enabled to maintain himself in a much more supreme position in the state and for a longer period. The history of other states supports this. But the early breakdown of the system, coupled with the successful encroachments by Parliament upon his claimed military prerogative, left him powerless, except in so far as he coöperated with that body. Various alternatives, such as mercenaries and indenture contracts, were attempted by successive kings to avert this undesired coöperation, but to little avail. Then there appears the emphasis upon the idea of a national army, the germ of which had never been lost since Anglo-Saxon days. The Tudors were the first to see the possibilities of such an emphasis.

The fact that their work was incomplete was due largely to the failure of Elizabeth to sense the possibilities. Thus, the Stuart period came with the problem of proper organization and administration of the military still unsolved. The story of all this is reflected in the history of the Commissions of Array.

From investigation it appears that the Commission of Array must have had its origin in some of the formal orders from the king to his tenants-in-chief to array and muster their followers for his service. In "some of the formal orders," because it is doubtful if there ever was any one prescribed method followed and it is just as doubtful whether or not this command was written. But out of these more or less indefinite and haphazard practices must have come the prototype of the Commission of Array, and so by the time we find the first record of its use, it had assumed the nature of a formal writ issued under seal and following a prescribed form. In the post-conquest period its language is that of the peremptory feudal command.

The Edwardian period brings a change. The feudal influences, never strong, weakened rapidly, especially in a military way, and the hold of the sovereign through the Commission of Array was distinctly declining. The fear of the Norman rulers had worn off; the English tendency toward a "business of peace" rather than of war had begun to appear, and new methods were necessary if England was to have an adequate army to support the designs of her ambitious sovereigns. And so, in the French wars there are new interpretations regarding the military obligation. The Commissions of Array reflect an appeal to the subject "for the glory of England" and "to support the king"; voluntary enlistments are sought, supplemented by the money wage, indenture contracts, and mercenaries, all of which are used to bolster up the military establishment. All of these offered the Parliament a chance to increase its powers and encroach upon those of the king.

The feudal institutions in England failed to develop a privileged military caste of fighting men. And nothing so hampered the feudal magnate in strengthening his local influence as the limitations placed upon his rights as a military chieftain by the appointment of such officials as Commissioners of Array, who were direct representatives of the crown in military matters.¹ The failure to grant special privileges and special immunities to the feudal, fighting class made knighthood not attractive but burdensome, and great pressure had to be

¹ Redlich deals with the "defeudalising" of English local government through the growth in power and influence of local officials, as the justices of the peace (Redlich and Hurst, *English Local Government*, Vol. I, pt. 1, p. 15).

exerted to compel those eligible to enter this class. The weakness of the feudal fighting force made resort to the Anglo-Saxon *fyrð* idea imperative. But this development emphasized the power of the local governmental institutions and officials (under whose control the local military unit existed) on the one hand and the rights of the Parliament in military matters on the other.²

The importance of the control of the military as a factor in the development of local government can scarcely be overestimated. The ealdorman of Anglo-Saxon days possessed a source of power in his control (along with the county assembly) of the militia and the array of the army for the king together with leadership thereof.³ The *shir-gerêfa* was in a secondary position to the ealdorman. With the conquest, the Anglo-Saxon earls were superseded by the Norman counts, *comites* and *comitissae*. The *vice comes* looked after the military affairs, but the *shir-gerêfa*, or sheriff, soon arose to supersede him. The growth in power of the sheriff was made at the expense of the local feudal magnates. The Commissions of Array stood in the way of the renewal of the old feudal service, and, as Gneist concludes, the Parliament allowed wide latitude in their use in order to prevent the recurrence of feudal service.⁴

The disorders and weaknesses of the rulers in the centuries following the Edwards brought further disorganization to the army. The Tudor rulers gave to the Commission of Array a patriotic appeal and stressed to a greater extent than had been done the idea of a national army. But the problems of organization and administration had never been, and were not then, solved in any workable or satisfactory fashion.

In the Stuart period we reach the climax in the history of the Commission. It may well be used to typify the rival views of king and Parliament. When Charles faced the nations in the spring and early summer of 1642, the success or failure of his Commissions of Array determined his ultimate fate. If he could through this writ enlist the services of the subjects on his side, he would triumph. If they failed, he was doomed. And

² The functioning of the local government in military matters is brought out by William Hudson in the case of Norfolk and the city of Norwich, in *Norfolk Archaeology*, XIV, 263 ff.

³ Gneist, *Const. Hist.*, I, 57.

⁴ Gneist, *op. cit.*, II, 132, note 1, a.

if the parliamentary Militia Ordinances were obeyed to a greater extent, the popular cause would be successful.

The legal battle, which preceded the clash of arms, summarized the whole military history of the state. And in a way each side was right. Crown lawyers and parliamentary advocates alike could point to precedents and statutes in support of their views. For, strangely enough, there had been in England what might be called a twofold development in the army. The first was "king-controlled" and established itself by the old accepted feudal theories of the supremacy of the king over the army and the bounden duty of the subject to serve without question when called, at home or abroad. And laws passed by Parliament seemed to confirm this view, and numerous precedents supported it. And rightly could Charles's supporters point to these to uphold the royal position. But, at the same time, down through the centuries, since the time when the fear of the Conqueror wore off, there had grown another theory of military obligation, national rather than feudal. The latter was not that of blind obedience to every call. It was more the theory that sought to protect the subject, safeguard his interests, and limit the amount of military service due. It sought to deny the right of the king to call for unlimited exertion under arms in foreign lands and without wage. And so in the troublous months of 1642, the upholders of the popular cause could rightly point to Parliament's share in the supervision and administration of the army. They could point to laws that seemed almost to establish the right of that body to control the military, and precedent and custom supported this quite opposite view. Learned judges had rendered conflicting opinions in a number of celebrated cases as to where the supreme control of the military rested. Hence the "battle of the tracts" took place.

But in this situation, as usual, practice, not theory, decided the issue. When Commissioner of Array faced parliamentary lord lieutenant in the shires, each armed with authority from his superiors, to muster the men of that district for service, the issue was squarely joined; and strength, not theory, determined the outcome. And the triumph of the Militia Ordinances over the Commissions of Array determined the fate of England in that year and those succeeding.

Thus, in connection with a little-considered, mediaeval writ may be told the history of England's military and constitutional development to a considerable degree. And in its story may be seen the many changes that occur between a period when the peremptory commands of an absolute, feudal sovereign are unquestionably obeyed and a period when the prevailing theories are summed up in the expression: *Pereant privilegia Regis ne pereat Regnum*.

[FINIS]

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No bibliography of a work of this nature can be complete. Many books are read, articles here and there consulted, and source collections combed with little tangible result. Nevertheless, impressions therefrom remain and are made use of almost unconsciously. Many references of such a nature, obviously, do not appear in the following pages. Nearly all the works listed are those to which actual references have been made in the footnotes of this study.

Any division of bibliographical material is more or less arbitrary, but the following has been adopted to assist the reader in surveying the nature of the works consulted.

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APPENDIX

A TYPICAL COMMISSION OF ARRAY

Carolus, Dei Gratia Angliae, Scotiae, Francia et Hibernia, Rex, ... Clarissimus Consanguineis Nostris Hen. Com. Huntington et, et fidelibus nostris Hen Hastings, ... Salutem: Sciatis quod nos militiae Inimicorum nostrorum si Regnum nostrum Angliae invadere praesumperint (quod absit), Gratia vobis favente Divina resistere ac pio Salvatione et Defensione nostri ac Regni praedicti et Ligeorum nostrorum ejusdem disponere et ordinare volentes ut Tenemur, assignavimus vos, vel aliquos tres, vel plures vest. ad arraiand. et Triand. omnes et singulos Homines, et arma, ac Homines armatos et sagittarios in Com. praed. commorantes infra Libertates et extra ad armari faciend. omnes illos, qui de corpore sunt potentes et habiles ad armand. qui de suo proprio habent unde seipsos armare possunt, viz.

The above Commission of Array was issued for the county of Leicester-shire by Charles I, on June 12, 1642. It is taken from Rushworth, Collections, Vol. IV, pp. 657 ff.

THE PROTOTYPE OF THE COMMISSION OF ARRAY

Vicecomiti Kanciae salutem. Praecipimus tibi quod sine dilatione summoneri facias per totam ballivam tuam Archiepiscopos, Episcopos, Abbates, Priores, Comites, Barones, Milites, et libere tenentes, et omnes alios qui servitium nobis debent sive servitium militare vel serjantiae: quodque similiter clamari facias per totam ballivam tuam, quod sint apud Wigorniam in crastino S. Trinitatis anno regni nostri septimo, omni dilatione et occasione postpositis, cum toto hujusmodi servitio quod nobis debent, parati cum equis et armis eundum in servitium nostrum quo eis praeceperimus. Eodem modo scribitur omnibus Vicecomitibus Angliae. (Cl. 7 Hen. III. 3.)

The above is a mobilization order from the King to the Vicecomites, about 1223.

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